FEDERAL BANKRUPTCY LAW.

Uniform System of Bankruptcy.

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AN ACT to establish a uniform system of Bankruptcy throughout the United States.

CHAPTER I.—DEFINITION.

Section 1. **Meaning of Words and Phrases.**—*a.* The words and phrases used in this act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows: (1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition; (2) "adjudication" shall mean the date of the entry of a decree that the defendant in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed; (3) "Appellate Courts" shall include the Circuit Courts of Appeals of the United States, the Supreme Courts of the Territories, and the Supreme Court of the United States; (4) "bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition or who has been adjudged a bankrupt; (5) "clerk" shall mean the clerk of a court of bankruptcy; (6) "corporations" shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association; (7) "court" shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee; (8) "courts of bankruptcy" shall include the district courts of the United States and of the Territories, the Supreme Court of the District of Columbia, and the United States Court of the Indian Territory and of Alaska; (9) "creditor" shall include any one who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy; (10) "date of bankruptcy," or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy" with reference to time, shall mean the date when the petition was filed; (11) "debt" shall include any debt, demand or claim provable in bankruptcy; (12) "discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this act; (13) "document" shall include any book, deed, or instrument in writing; (14) "holiday" shall include Christmas, the Fourth of July, the Twenty-second of February, and any day appointed by the President of the United States or the Congress of the United States as a holiday or as a day of public fasting or thanksgiving; (15) a person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts; (16) "judge" shall mean a judge of a court of bankruptcy, not including the referee; (17) "oath" shall include affirmation; (18) "officer" shall include clerk, marshal, receiver, referee and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer; (19) "persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden, shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations; (20) "petition" shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this act, or by creditors alleging the commission of an act of bankruptcy, by a debtor therein named; (21) "referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or any one acting in his stead; (22) "conceal" shall include secrete, falsify, and mutilate; (23) "secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets; (24) "States" shall include the Territories, the Indian Territory, Alaska, and the District of Columbia; (25) "transfer" shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property absolutely or conditionally, as a payment, pledge, mortgage, gift, or security; (26) "trustee" shall include all of the trustees of an estate; (27) "wage-earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year; (28) words importing the masculine gender may be applied to and include corporations, partnerships, and women; (29) words importing the plural number may be applied to and mean only a single person or thing; (30) words importing the singular number may be applied to and mean several persons or things.

CHAPTER II.—CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.

Sec. 2. That the courts of bankruptcy as herein before defined, viz.: the district courts of the United States in the several States, the Supreme Court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside or have their domicile within the United States, but have property within their jurisdiction, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdiction; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals upon application of parties in interest in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees or other similar controlling bodies of corporations for violation of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize

the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and (19) transfer cases to other courts of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specified powers not herein enumerated.

CHAPTER III.—BANKRUPTS.

Sec. 3. **Acts of Bankrupts.**—*a.* Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

b. A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay or defraud his creditors, or for the purpose of giving a preference as hereinafter provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive or continuous possession of the property unless the petition creditors have received actual notice of such transfer or assignment.

c. It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

d. Whenever a person against whom a petition has been filed, as hereinbefore provided under the second and third subdivisions of this section, takes issue with and denies the allegation of this insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination, the burden of proving his solvency shall rest upon him.

e. Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties, who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

Sec. 4. **Who May Become Bankrupts.**—*a.* Any person who owes debts, except a corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.

b. Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

Sec. 5. **Partners.**—*a.* A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

b. The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

c. The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

d. The trustee shall keep separate accounts of the partnership property belonging to the individual partners.

e. The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

f. The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

g. The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

h. In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

Sec. 6. **Exemptions of Bankrupts.**—*a.* This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

Sec. 7. **Duties of Bankrupts.**—*a.* The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt by his creditors or other persons, to evade the provisions of this act, coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided, however, That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

Sec. 8. **Death or Insanity of Bankrupts.**—*a.* The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: Provided, That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

Sec. 9. **Protection and Detention of Bankrupts.**—*a.* A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this act.

b. The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

Sec. 10. **Extradition of Bankrupts.**—*a.* Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment from one district within which a district court has jurisdiction to another.

Sec. 11. **Suits By and Against Bankrupts.**—*a.* A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

b. The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

c. A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

d. Suit shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

Sec. 12. **Compositions, When Confirmed.**—*a.* A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

b. An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

c. A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

d. The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

e. Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

Sec. 13. **Compositions, When Set Aside.**—*a.* The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

Sec. 14. **Discharges, When Granted.**—*a.* Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

b. The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offence punishable by imprisonment as herein provided; or (2) with fraudulent intent to conceal his true financial condition, and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

c. The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

Sec. 15. **Discharges, When Revoked.**—*a.* The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

Sec. 16. **Co-Debtors of Bankrupts.**—*a.* The liability of a person who is a co-debter with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

Sec. 17. **Debts Not Affected by a Discharge.**—*a.* A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are judgments in actions for frauds, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

CHAPTER IV.—Courts and Procedure Therein.

Sec. 18. **Process, Pleadings, and Adjudications.**—*a.* Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpœna, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service can not be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits in equity in courts of the United States.

b. The bankrupt, or any creditor, may appear and plead to the petition within ten days after the return day, or within such further time as the court may allow.

c. All pleadings setting up matters of fact shall be verified under oath.

d. If the bankrupt or any of his creditors shall appear within the time limited and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this act, and makes the adjudication or dismiss the petition.

e. If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

f. If the judge is absent from the district, or the divison of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

g. Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee.

Sec. 19. **Jury Trials.**—*a.* A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his solvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

b. If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such circuit court has or is to have a jury first in attendance.

c. The right to submit matters in controversy, or an alleged offence under this act, to a jury shall be determined and enjoyed, except as provided by this act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

Sec. 20. **Oaths, Affirmations.**—*a.* Oaths required by this act, except upon hearings in court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

b. Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

Sec. 21. **Evidence.**—*a.* A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt, who is a competent witness under the laws of the State in which the proceedings are pending, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this act.

b. The right to take depositions in proceedings under this act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

c. Notice of the taking of dispositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim, notice shall also be served upon the claimant, and when in opposition to a discharge, notice shall also be served upon the bankrupt.

d. Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

e. A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

f. A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

g. A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart.

Sec. 22. **Reference of Cases After Adjudication.**—*a.* After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with only limited authority to act in the premises or to consider and report upon specified issues; or (2) to any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

b. The judge may at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

Sec. 23. **Jurisdiction of United States and State Courts.**—*a.* The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

b. Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

c. The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act.

Sec. 24. **Jurisdiction of Appellate Courts.**—*a.* The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

b. The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

Sec. 25. **Appeals and Writs of Error.**—*a.* That appeals, as in equity cases, may be taken in bankruptcy proceeding from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

b. From any final decision of a court of appeals, allowing or rejecting a claim under this act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

2. Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this act throughout the United States.

c. Trustees shall not be required to give bond when they take appeals or sue out writs of error.

d. Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former may exercise

jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

Sec. 26. **Arbitration of Controversies.**—*a.* The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

b. Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

c. The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

Sec. 27. **Compromises.**—*a.* The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

Sec 28. **Designation of Newspapers.**—*a.* Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices required to be published by this act and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

Sec. 29. **Offenses.**—*a.* A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to the bankrupt estate which came into his charge as trustee.

b. A person shall be punished by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed, while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceedings in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

c. A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property or the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

d. A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

Sec. 30. **Rules, Forms and Orders.**—*a.* All necessary rules, forms and orders as to procedure and for carrying this act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

Sec. 31. **Computation of Time.**—*a.* Whenever time is enumerated by days in this act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

Sec. 32. **Transfer of Cases.**—*a.* In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

CHAPTER V.—Officers, Their Duties and Compensation.

Sec. 33. **Creation of Two Offices.**—*a.* The offices of referee and trustee are hereby created.

Sec. 34. **Appointment, Removal, and Districts of Referees.**—*a.* Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1) appoint referees, each for a term of two years, and may, in their descretion, remove them because their services are not needed or for other cause; and (2) designate and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

Sec. 35. **Qualification of Referees.**—*a.* Individuals shall not be eligible to appointment as referees unless they are respectively (1) competent to perform the duties of that office; (2) not holding any office of profit or emolument under the laws of the United States or of any State other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public; (3) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and (4) residents of, or have their offices in, the territorial districts for which they are to be appointed.

Sec. 36. **Oaths of Office of Referees.**—*a.* Referees shall take the same oath of office as that prescribed for judges of United States courts.

Sec. 37. **Number of Referees.**—*a.* Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

Sec. 38. **Jurisdiction of Referees.**—*a.* Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to (1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

Sec. 39. **Duties of Referees.**—*a.* Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4) give notice to creditors as herein provided; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done when the bankrupts fail, refuse, or neglect to do so; (7) safely keep, perfect, and transmit to the clerks the records herein required to be kept by them, when the cases are concluded; (8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9) upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10) whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

b. Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practice as attorneys and counselors at law in any bankruptcy proceedings; or (3) purchase, directly or indirectly, any property of an estate in bankruptcy.

Sec. 40. **Compensation of Referees.**—*a.* Referees shall receive as full compensation for their services payable after they are rendered, a fee of ten dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which have been administered before them one per centum commissions on sums to be paid as dividends and commissions, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

b. Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

c. In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee.

Sec. 41. **Contempts Before Referees.**—*a.* A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpœnaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law: Provided, that no person shall be required to attend as a witness before a referee at a place outside of the State of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

b. The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of the court.

Sec. 42. **Records of Referees.**—*a.* The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

b. A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

c. The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

Sec. 43. **Referee's Absence or Disability.**—*a.* Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy.

Sec. 44. **Appointment of Trustees.**—*a.* The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

Sec. 45. **Qualifications of Trustees.**—*a.* Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

Sec. 46. **Death or Removal of Trustees.**—*a.* The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

Sec. 47. **Duties of Trustees.**—*a.* Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such estates; (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; (3) deposit all

money received by them in one of the designated depositories; (4) disburse money only by check or draft on the depositories in which it has been deposited; (5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources, and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment, and every two months thereafter, unless otherwise ordered by the courts; and (11) set apart the bankrupt's exemptions, and report the items and estimated value thereof to the court as soon as practicable after their appointment.

b. Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

Sec. 48. **Compensation of Trustees.**—*a.* Trustees shall receive as full compensation for their services, payable after they are rendered, a fee of five dollars, deposited with the clerk at the time the petition is filed, in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered, such commissions on sums to be paid as dividends and commissions as may be allowed by the courts, not to exceed three per centum on the first five thousand dollars or less, two per centum on the second five thousand dollars or part thereof, and one per centum on such sums in excess of ten thousand dollars.

b. In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

c. The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

Sec. 49. **Accounts and Papers of Trustees.**—*a.* The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

Sec. 50. **Bonds of Referees and Trustees.**—*a.* Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

b. Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

c. The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

d. The court shall require evidence as to the actual value of the property of sureties.

e. There shall be at least two sureties upon each bond.

f. The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

***g.* Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.**

h. Bonds of referees, trustees, and designated depositors shall be filed of record in the office of the clerk of the court and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

i. Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this act, of whose estates they are respectively trustees.

j. Joint trustees may give joint or several bonds.

k. If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

l. Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

m. Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

Sec. 51. **Duties of Clerks.**—*a.* Clerks shall respectively (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without and cannot obtain the money with which to pay such fees; (3) deliver to the referees upon application all papers which may be referred to them, or, if the officers of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used; (4) and within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

Sec. 52. **Compensation of Clerks and Marshals.**—*a.* Clerks shall respectively receive as full compensation for their service to each estate a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

b. Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their service in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may be hereafter enacted, fixing the compensation of marshals.

Sec. 53. **Duties of Attorney General.**—*a.* The Attorney General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

Sec. 54. **Statistics of Bankruptcy Proceedings.**—*a.* Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney General, for statistical purposes, within ten days after being requested by him to do so.

CHAPTER VI.—CREDITORS.

Sec. 55. **Meetings of Creditors.**—*a.* The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

b. At the first meeting of the creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

c. The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this act.

d. A meeting of creditors subsequent to the first one may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

e. The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

f. Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

Sec. 56. **Voters at Meetings of Creditors.**—*a.* Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

b. Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

Sec. 57. **Proof and Allowance of Claims.**—*a.* Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and if so what securities are held therefor, and whether any, and if so what payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

b. Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

c. Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending, or before the referee if the case has been referred.

d. Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

e. Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

f. Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

g. The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

h. The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

i. Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

j. Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

k. Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

l. Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

m. The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

n. Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after

the expiration of such time, then within sixty days after the rendition of such judgment: Provided, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

Sec. 58. **Notices to Creditors.**—*a.* Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the conformation of compositions or the discharge of bankrupts; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy, and (8) the proposed dismissal of the proceedings.

b. Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

c All notices shall be given by the referee, unless otherwise ordered by the judge.

Sec. 59. **Who May File and Dismiss Petitions.**—*a.* Any qualified person may file a petition to be adjudged a voluntary bankrupt.

b Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

c. Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

d. If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

e. In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

f. Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

g. A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.

Sec. 60. **Preferred Creditors.**—*a.* A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

b. If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefitted thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

c. If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

d. If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

CHAPTER VII.—ESTATES.

Sec. 61. **Depositories for Money.**—*a.* Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time as occasion may require, by like order, increase the number of depositories or the amount of any bond or change such depositories.

Sec. 62. **Expenses of Administering Estates.**—*a.* The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

Sec. 63. **Debts Which May Be Proved.**—*a.* Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments.

b. Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

Sec. 64. **Debts Which Have Priority.**—*a.* The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

b. The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in voluntary cases; (3) the cost of administration including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases, while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerk, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

c. In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

Sec. 65. **Declaration and Payment of Dividends.**—*a.* Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

b. The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more, and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order.

c. The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

d. Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such court shall be paid any amounts.

e. A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this act.

Sec. 66. **Unclaimed Dividends.**—*a.* Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

b. Dividends remaining unclaimed for one year, shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: Provided, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

Sec. 67. **Liens.**—*a.* Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

b. Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

c. A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

d. Liens given and accepted in good faith and not in contemplation of or in fraud upon this act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this act.

e. That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this act subsequent to the passage of this act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or incumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt, and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this

act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

f. That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: Provided, That nothing herein contained shall have the power to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value, who shall have acquired the same without notice or reasonable cause for inquiry.

Sec. 68. **Set-Offs and Counter Claims.**—*a.* In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other and the balance only shall be allowed or paid.

b. A set-off or counter claim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

Sec. 69. **Possession of Property.**—*a.* A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal, seize and hold it subject to further orders. Before such warrant is issued the petitioner applying therefor shall enter in a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released, if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

Sec. 70. **Title to Property.**—*a.* The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interest in patents, patent rights, copyrights and trademarks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him; Provided: That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

b. All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

c. The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

d. Whenever a composition shall be set aside or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

e. The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

f. Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him.

The Time when this Act shall go into Effect.

a. This act shall go into full force and effect upon its passage: Provided, however, that no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

b. Proceedings commenced under State insolvency laws before the passage of this act shall not be affected by it.

Approved July 1, 1898.

BANKING AND COMMERCIAL LAWS.

COMPILED EXPRESSLY FOR THE BANKERS' DIRECTORY.

SYNOPSIS OF THE LAWS OF ALABAMA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. GRAHAM & STEINER, Attorneys at Law, Montgomery. (*See Card in Attorneys' List.*)

Accounts. In all suits on accounts an itemized statement of the account, verified by affidavit of a competent witness, is *prima facie* evidence of the correctness of the account, if a statement to that effect is endorsed on the summons.

Acknowledgments and proofs of conveyances may be taken by judges of the supreme and circuit courts and their clerks, chancellors, and registers in chancery, judges of probate courts, justices of the peace, and notaries. In other States they may be taken by judges and clerks of any federal court, judges of any court of record, notaries public and commissioners appointed by the governor of this State. If out of the United States, by the judge of any court of record, mayor or chief magistrate of any city, town, borough or county, notaries public, or any diplomatic or consular or commercial agent of the United States.

Actions. All suits at law are commenced by suing out a summons, which must be accompanied by a complaint, stating the cause of action. All suits on moneyed demands, except commercial paper, must be brought in the name of the party really interested, whether he have the legal title or not. Suits against non-residents may be commenced by attachment and publication. Every householder or freeholder must be sued in the county of his residence. For recovery of land the regular action of ejectment may be brought or the statutory action for the recovery of land. Personal property is recovered by an action of detinue. All actions survive to the heir or administrator according to their respective right. Non-resident plaintiffs are required to give security for costs or make deposit with clerk before commencing suit.

Administration of Estates. Letters testamentary or of administration are issued out of the probate court upon the estates of all persons dying in the State, or elsewhere, and leaving property in the State. Executors, unless exempted by will, and administrators are required to give bond and to make annual settlements. They must give notice of their appointment by publication. All claims against the estates of deceased persons must be presented within twelve months after the grant of letters or after the accrual of the claim and must be verified by affidavit. No suit can be commenced against an administrator or executor until six months after his appointment, and no judgment rendered until twelve months thereafter. The statute of limitations is suspended when a claim is duly presented. But personal representative may give written notice to a claimant that such claim is disputed, and require suit to be brought thereon within six months. Judgments against an administrator in chief may be revived against the administrator *de bonis non* when the administrator has died, resigned, or been removed. The court must appoint three appraisers in each county in which the decedent left property, who must make a separate inventory for property in that county. If an estate is insolvent it must be so declared by the administrator and adjudged by the probate court. Claims against such estate must be verified by affidavit, and filed within six months after a declaration of insolvency.

Affidavits. Within this State affidavits may be taken before every judge or clerk of any court, justices of the peace and notaries public, or any other person by law invested with judicial functions. Outside of the State and within the United States may be taken before any judge or clerk of any federal court, judge of any court of record in any State, notaries public and commissioners appointed by the governor.

Aliens. "Foreigners shall enjoy the same rights in respect to possession, enjoyment and inheritance of property as native-born citizens."

Arbitration. The laws of this State encourage arbitration, and courts are compelled by statute to make an order submitting cases to arbitration when moved for by the parties. The code provides a system of arbitration, and when this is followed the award of the arbitrators may be entered up as the judgment of the proper court, whether made in a pending suit or not. Every arbitration which was good at common law is good in this State and has the effect of a common-law award, but can not be entered as the judgment of the court.

Arrest. There can be no arrest on civil process except for contempt.

Assignments and Insolvency. Every general assignment made by debtor, or a conveyance by a debtor of substantially all of his property in payment of a prior debt, by which a preference or priority of payment is given to one or more creditors, shall enure to the benefit of all the creditors equally, but this section shall not apply to mortgages given to secure a debt contracted contemporaneously with the execution of the mortgage. All assignments by a debtor made with intent to hinder, delay, or defraud creditors, are void. All deeds of assignment for the benefit of creditors shall, as soon as executed, be filed and recorded in the office of the Judge of Probate of the county in which the property is situated. Every judgment confessed, attachment procured by the debtor, or other disposition of property by which a debtor conveys all, or substantially all, of his property which is subject to execution in payment or as security for a debt, shall be deemed a general assignment.

Attachment process will issue upon affidavit by the creditor or his agent of the amount due and that the debtor absconds, or resides out of the State, or secretes himself so that process can not be served upon him, or is about to remove out of the State, or has or is about to fraudulently dispose of his property, or fraudulently withholds money, chattels or effects which are liable to the satisfaction of his debts; plaintiff must give bond in double the amount claimed. Garnishment process will issue in aid of attachment in all such cases. Garnishment may be dissolved by giving bond. Code, 1896, Secs. 2183, 2184. In all cases of attachments sued out solely upon the ground that the defendant is a non-resident, the attachment may issue without giving bond, but if defendant appears and pleads, bond must be given or the attachment dismissed.

Banks. The national bank system is in force in this State uncontrolled in any way by State laws, except that the shares are subject to taxation as other personal property, but the bank is required to pay the tax.

There is no provision of law for the establishment of banks of issue in this State. Banks of discount and deposit may be established under the general incorporation laws, but must be wound up at the end of twenty years. Depositors not claiming interest are preferred creditors in case of insolvency.

Statutory provisions for banks of discount and deposit: 1. Any number of persons (not less than three stockholders) may associate themselves together to establish a bank of deposit and discount; their capital stock to be not less than $50,000, of which not less than 20 per cent, and in no case less than $25,000, must be actually paid by the subscribers for stock before the filing of the declaration of incorporation. 2. Such persons must make a declaration in writing under oath, setting forth: (*a*) The name of the association; (*b*) place of business; (*c*) the number of shares of capital stock, and total amount; (*d*) names and residences of stockholders, and number of shares held by each; (*e*) time when the business of the association is to commence and to end. 3. Which declaration must be recorded in the probate court of the county where the bank is established. 4. A transcript of the declaration of incorporation may also be filed in the office of the secretary of State, who issues to the incorporators a certificate of incorporation. 5. A stockholder is liable for the debts of the bank only to the extent of unpaid stock owned by him.

Any banker who discounts a bill or note at a greater rate than 8 per cent can not enforce the collection of same except as to the principal, and if any interest has been paid it must be deducted from the principal.

Bills of Lading. False bills of lading and receipts are forbidden. No warehouseman, common carrier, or wharfinger, or other person engaged in the business of storage, carriage, or keeping for shipment, or of forwarding things or property shall issue any bill of lading or document for any property, by which it shall appear that such property has been shipped on any vessel or delivered at any railroad warehouse, unless same is actually delivered; provided, railroad may, in certain cases, issue bill of lading upon delivery of cotton to compress.

Bills of Exchange. Promissory notes and bonds payable in money at a bank or private banking house, or a certain place of payment therein designated, and bills of exchange are governed by the commercial law. All other instruments payable at a bank, or other designated place of payment, are governed by the commercial law as to days of grace, protest and notice. Three days of grace allowed on commercial paper. Grace allowed on sight bills. No acceptance valid unless in writing. Damages on protest for nonacceptance or nonpayment 5 per cent. This covers all charges except interest.

Chattel Mortgages. (*See Mortgages.*)

Collaterals. Personal property or securities, whether negotiable or not, pledged or deposited as collateral security, may, in default of payment, be sold by the creditor at public auction, at place at which sales at public outcry are usual. Creditor must give to pledgor written notice of his intention to sell, and of time and place of sale, two days before sale, and must advertise sale for five days in newspaper published in county where it is to be made. Name of pledgor not to be published without his consent. Parties may make such other contracts as they may see fit for the sale of pledges, not in conflict with laws of the State. Pledgee can not assign or transfer pledged property to any other than pledgor or his assignee, except with original debt. Violation of this provision operates a discharge of the pledge, and reinstatement of pledgor's original ownership thereof, but does not affect debt. Pledged property may be assigned with original debt, assignee taking rights of original pledgee. Collaterals held by pawnbrokers must be entered in a book that is open to inspection, and can be sold only at public auction after five days' advertisement.

Contracts. Contracts for the conditional sale of personal property by the terms of which the vendor retains the legal title until paid for, must be in writing and recorded in sixty days, else they are void as against creditors and purchasers without notice. Contracts for the sale of land, or any interest therein (except leases for not longer than one year), or contracts not to be performed in a year, or to answer for the debt of another, or upon consideration of marriage, after marriage rite; every special promise by an executor or administrator to answer damages out of his own estate, are void unless in writing, subscribed by the party to be charged.

Conveyances. All persons of the age of twenty-one years, not laboring under some legal disability, may convey their real estate or any interest therein by instrument in writing signed by the grantor, or his agent duly authorized in writing, and attested by one witness, or if the grantor can not write, by two witnesses who are able to write, and who sign their names as witnesses. If the grantor is not able to sign his name it must be written for him and the words "his mark" written over or against it. The person writing his name must sign as a witness. A parol lease for less than one year is valid. A married woman over eighteen years of age may convey dower in her husband's lands, but not her separate estate. The husband must join in any conveyance of the wife's separate estate. Conveyances to operate as notice must be acknowledged and recorded. (*See Acknowledgment.*) If this is done within twelve months after their execution they may be used as evidence without further proof of execution.

Corporations. Every company, corporation, or association, not organized under the laws of Alabama, shall, before engaging in any business in this State, file in the office of the secretary of State, at the capitol in Montgomery, an instrument in writing, under the seal of such company, corporation, or association, and signed officially by the presi-

dent and secretary thereof, designating at least one known place of business in this State, and an authorized agent residing thereat. If such corporation is engaged in any business of insurance, the statement must be filed in the office of the auditor. If the agent is changed, a new paper must be filed. Held not to apply to corporations selling goods by traveling agent or sample. Foreign corporations transacting business in this State without complying with above provisions, for each offense forfeit to the State $1,000, and any person acting as agent for foreign corporation that has not so complied, forfeits for each offense $500. All foreign corporations doing business in this State are required to pay license fees ranging from $25 to $250, according to capital. Foreign corporations can do no business until fees are paid, and all contracts before then are void. (Code 1896, 1321-1324.) All corporations engaged in the business of lending money must pay an annual license of $100. Corporations operating pig-iron storage yards must pay an annual license of $50. All corporations which are not specifically required to pay an annual license must pay an annual license ranging from $10 to $500, according to amount of paid-up capital stock.

Courts. *Terms and Jurisdiction.* The supreme court has only appellate jurisdiction and cases are tried on the record sent up. Circuit courts have unlimited common law jurisdiction and exclusive jurisdiction of libel, slander, assault and battery, and ejectment. The courts of chancery have exclusive equity jurisdiction. Regular terms of both twice a year in nearly every county. Chancery courts have full equity powers. Justices of the peace have jurisdiction of all civil causes where the amount in controversy does not exceed $100 in value, except in cases of libel, slander, assault and battery, and ejectment. Names of all parties plaintiff and individual names of copartners must be given in writs. Partnership may be sued in courts of law in firm name, without setting forth names of copartners. The writ may be served upon any one of the partners; the judgment reaches the partnership property alone. Any one partner, or his personal representative, may be sued alone on a partnership obligation. Non-residents must give security for costs when suit is commenced or within such time thereafter as the court may direct. Money may be deposited with the clerk instead of sureties.

Days of Grace. All commercial paper is entitled to grace. If the last day of grace falls on a holiday the paper is due the next day. Holidays are Sundays, Christmas day, 1st January, 22d February, 26th April, 4th July, Thanksgiving day, Good Friday, and Mardi Gras.

Depositions. In cases at law depositions may be taken of witnesses who can not be present at the trial in the following cases: When the witness is a female; when the witness is too sick to attend court; when the witness resides more than 100 miles from the place of trial or is absent from the State; when the witness is about to leave the State and not return in time for the trial; when the witness is the sole witness of the facts; when the witness is one of the officers designated in Code § 1833. Affidavit must be made of one of the above facts, and of the materiality of the witness. May be taken on interrogations or oral examination. Must in either case be by commissioner appointed by the court for that purpose. The commissioner may be any suitable person, need not be an officer.

Descent and Distribution. The real estate of persons dying intestate, in this State, descends, subject to the payment of debts and the widow's dower, as follows: First to the children of the intestate or their descendants per stirpes in equal parts. Next to the parents, if they survive, in equal parts. If only one parent survives then one-half to such parent and one-half to the brothers and sisters of the deceased or their descendants, and if there be no brothers and sisters and their descendants then the whole estate shall go to the surviving parent. If there are no children or their descendants, and no father or mother, then to the brothers and sisters of the intestate, or their descendants, in equal parts. If there are none of the above to take, then the whole to the husband or wife of the intestate, and if there be no husband or wife and none of the foregoing living then to the next of kin in equal degree in equal parts. If there are no next of kin it escheats to the State. The personal estate is distributed the same as the real estate, except that if there are no children the widow is entitled to all of the personal estate. If but one child she takes one-half. If not more than four children to a child's part, and if more than four to one-fifth. Posthumous children take as others. Illegitimate children inherit from their mother. The husband upon the death of the wife is entitled to half of her personal estate absolutely and to the use of all of her real estate for life, unless he has been divested of all control over her estate by a decree of the chancery court.

Divorce. The chancery court has exclusive jurisdiction of divorce and all matters pertaining thereto, and may be for the following causes: To either party for adultery, for voluntary abandonment for two years, for imprisonment in the penitentiary for two years, when the sentence is for seven years or longer, for commission of the crime against nature, and for becoming addicted to habitual drunkenness after marriage. May be granted to the husband when the wife was pregnant at the time of marriage without his knowledge or agency. May be granted to the wife when the husband has committed actual violence on her person attended with danger to life or health, or from his conduct there is reason to apprehend such violence. The plaintiff must have been a bona fide resident at least twelve months, and when the ground of divorce is abandonment must allege and prove that he has been a bona fide resident of the State for three years next before the filing of the bill. Pending a suit for divorce the court must make an allowance for the support of the wife out of the estate of the husband, and alimony is allowed after divorce according to the circumstances of the case. Divorce for adultery bars dower. A divorce deprives the husband of all control over the wife's separate estate.

Dower. Unless the wife has relinquished her right of dower in the manner provided by statute she is, upon the death of the husband, entitled to dower in all lands of which the husband was seized in fee during the marriage, or of which another was seized to his use or to which he had a perfect equity, having paid all the purchase money therefor. The dower interest is one-half when the husband leaves no lineal descendants, and one-third when the estate is insolvent or the husband leaves children or their descendants. If the wife has at the death of the husband a separate estate equal in value to her dower interest she shall not have dower, and if of less value is only entitled to such amount as with her estate will make the full value of the dower.

Executions. Writ of *fieri facias* is a lien only within the county in which it is received by the officer, on lands and personalty of defendant subject to levy and sale, from the time only that the writ is received by such officer and continues as long as writ is regularly delivered to the sheriff without the lapse of an entire term. A statement of a judgment certified by the clerk of the court may be filed in the office of the judge of probate, which makes the judgment a lien within the county in which it is filed for ten years thereafter. Execution may be issued on such judgment at any time. Executions issued by justices are liens on the property of the defendant, on which they are levied from the time of the levy. An order must be obtained from the circuit court for the sale of lands levied on under execution from a justice court. No stay of execution in circuit court except by appeal, and supersedeas bond which delays collection until affirmance by supreme court, and entails 10 per cent damages, with legal interest and costs. In justice's courts stay is granted on good security; below $20, thirty days; over $20, sixty days.

Exemptions. The homestead, not exceeding 160 acres in area, and not exceeding $2,000 in value, or, in a city, town or village, the lot with dwelling, etc., not exceeding $2,000 in value, owned and occupied by any resident. Exemption of homestead may be waived, but wife must join in the waiver and it must be acknowledged. Any person may, by stipulation in writing, waive whole or any specific part of exemption of personalty, without the consent of wife. Personal property to value of $1,000 selected by debtor, and wages to $25 per month, are also exempt. Widow's exemption includes also wearing apparel, family books and pictures, and provisions for twelve months. On the death of any married woman leaving an estate and a minor child, or children, there shall be exempt from administration of her estate in favor of such minor such property, real and personal, as is now exempt by law to the widow and minor children upon the death of the father. No property owned by partners as partnership property, or purchased with partnership funds for partnership purposes, shall be subject of homestead or other exemption as against copartners or partnership creditors. Proceeds of life insurance exempt from creditors of the assured or beneficiary.

Fraud. Obtaining money or goods on credit under false color or pretense of carrying on business, or under false representation of pecuniary condition, with intent to defraud, or bringing into the State money or goods so obtained, punished as larceny.

Garnishment may issue in any case after suit commenced upon affidavit of necessity and bond as in attachment cases.

Guaranty Companies. Guaranty companies may become surety on bonds in all proceedings in any court of this State upon the following conditions: All such companies, if incorporated under the laws of Alabama, must have a capital stock paid in of at least $100,000, which must be invested either in United States bonds, or bonds of the State of Alabama, or other first-class bonds or stocks, which must be worth more than par, and must deposit with the State treasurer $25,000 worth of such securities. The debts of such company must not exceed its available assets and a premium reserve equal to 50 per cent of the annual premiums on all outstanding risks, and such companies must furnish semi-annual statements of their financial condition, and pay a license of $100 per annum. If such company is not organized under the laws of Alabama, it must have a paid-up capital of $250,000, which must be invested as above stated, or in the bonds of the State under whose laws it is organized, and must deposit with the State treasurer $50,000 of such securities; and the same rule as to debts and license above stated applies to them, and the auditor has power to revoke the license of such company when it is shown to be in an insolvent condition, or has violated any of the provisions of this Act; and when so revoked all bonds executed by such company shall be cancelled, unless additional security be given. (Code 3093, 3094.)

Holidays. *(See Days of Grace.)*

Husband and Wife. *(See Married Women.)*

Insolvency. There are no insolvent laws in this State. Estates of dead men may be declared insolvent and the creditors paid pro rata. Claims against such estates must be filed within six months after adjudication of insolvency, verified by affidavit.

Insurance Companies. By an act of the legislature, insurance companies and agents are prevented from entering into or forming any combination or association for the purpose of fixing any schedule or tariff of insurance rates, and in all actions on insurance policies, if it is shown that the defendant company or its agent belonged to any tariff association or other organization of like character, the plaintiff shall be entitled to recover, in addition to his actual damage, 25 per cent of such actual damage as a penalty.

Interest. Legal rate is 8 per cent, and same is allowed on all open accounts, judgments, and decrees. Usury forfeits all interest. Usurious interest paid may be recovered back within twelve months after completed payment. (Code 2630.)

Judgments of courts of record are proved by a certified transcript. Judgment not a lien. Execution received by sheriff during life of defendant may be levied after his decease, or alias execution issued and levied if there has not been lapse of entire term so as to destroy lien originally created. Above applies to executions from circuit and chancery courts. An execution issued by a justice of the peace is a lien only from time of its levy. *Mechanics' Lien.* Mechanics and material men have a lien on houses built and the ground on which they stand upon complying with the law. (Code 2723-2752.)

Lien for Rent. Landlords of storehouses, dwelling houses and other buildings, have a lien for rent on such goods, furniture and fixtures therein as may belong to the tenant, superior to all other liens, except for taxes.

Limitations. Notes and stated accounts, six years; open accounts, three years; sealed instruments, real actions, and motions against officers, ten years; judgments, twenty years; actions on the case, one year. Bar created by statute can only be removed by a partial payment, made on the contract before the bar is complete, or by an unconditional promise in writing. Those under legal disability have three years after is removal in which to begin suit; but no action can be commenced after twenty years. Statutes of limitation apply to married women's separate estates. Actions founded on a promise in writing not under seal, or for trespass to person or property, must be brought within six years. Statutes of limitation are made applicable to equitable as well as legal demands, but do not run against direct trusts. Any agreement or stipulation to shorten the period prescribed by law for the bringing of any action is void.

Married Women. The wife has full legal capacity to contract as if she were *sole*, except that she can not alienate or encumber her real estate without the husband joining in the conveyance unless the husband be insane or has abandoned her, or is a non-resident, or has been a convict in the penitentiary for two years under a sentence for seven years, in which cases the wife may convey it as if she were *sole*.

Husband and wife may contract with each other, but the wife can not be surety for the husband. All of the property and the earnings of the wife, are her separate estate and are not liable for the debts of the husband. The wife must sue and be sued alone for all matters relating to her separate estate or contracts, and for all torts to her person or property. The chancery court has power to relieve of any or all disabilities of coverture.

Mortgages are executed and acknowledged in the same manner as deeds. May be foreclosed by bill in equity, or, if there be a provision to that effect, by sale under power, upon such default as authorizes a sale. All mortgages are void against creditors or purchasers without notice, unless recorded. Homestead realty can not be mortgaged or otherwise

allened without signature and assent of wife, evidenced by acknowledgment, upon private examination separate and apart from the husband, and certified. All mortgages must be in writing, signed by the mortgagor. Payment of mortgage debt, made before or after maturity of debt, revests in the mortgagor, or his assigns, the title to the real or personal property mortgaged, if made in the lifetime of the mortgagor; if made after his death, such payment revests title to personal property in the personal representative, and title to realty in the heirs, devisees or legatees of the mortgagor. Chattel mortgages must be in writing. When the mortgagor is sued by the mortgagee for possession of the mortgaged property he may defend by showing payment of the debt, or part payment and a tender of the balance, or may pay it after judgment.

Notes and Bills of Exchange. Promissory notes and bonds payable in money at a bank or private banking house, or a certain place of payment therein designated, and bills of exchange, are governed by commercial law and are negotiable instruments. All other instruments payable in money at a bank or private banking house, or a certain place of payment therein designated, are governed by the commercial law as to days of grace, protest and notice. All bonds, contracts, and writings, for payment of money or any other thing, or the performance of any act or duty, are assignable by indorsement so as to authorize an action thereon by each successive indorsee. Acceptances of bills of exchange must be in writing, but an unconditional written promise to accept a bill before it is drawn is an actual acceptance, and any person upon whom a bill is drawn and to whom the same is delivered for acceptance, who refuses to return it within twenty-four hours after such delivery, or within such other period as the holder may allow to return the bill accepted or non-accepted, is deemed to have accepted it.

Powers of Attorney. Powers of attorney or other instruments conferring authority to convey property may be proved or acknowledged in the same manner and must be received as evidence to the same extent as conveyances (*see Conveyances*), and must be executed as conveyances. A power of attorney to relinquish dower must be executed by husband and wife jointly. Her signature must be attested by two witnesses, who are able to write or acknowledge as required for conveyances of land.

Probate Law. A court of probate, consisting of one judge is established for each county in the State. This court has jurisdiction of the probate of wills, of granting letters testamentary and of administration, and the repeal or revocation of the same, of the settlements of account of executors and administrators, of the sale and disposition of the real and personal property belonging to, and the distribution of intestates, estates. Also of the appointment, removal and settlements of guardians for minors and persons of unsound mind, the binding out of apprentices, the allotment of dower, and the partition of land belonging to joint owners. A court of probate must be held at the court house of each county on the second Monday of each month, and the judge may hold special or adjourned terms whenever necessary, but such court must at all times be considered open except on Sundays.

Protest. Indorsers of bills of exchange or notes payable in money at a bank or private banking house are charged by the general rules of commercial law. To charge the indorser of paper, not commercial, suit must be brought against the maker to first court. Damages on bills of exchange, whether foreign or inland, protested for non-acceptance or non-payment, are 5 per cent on the sum drawn for. But the holder may recover costs of protest incurred previous to and at the time of giving notice of non-payment and legal interest upon the aggregate amount of the principal sum specified in such bill and of the damages thereon.

Replevin. The common law action of replevin is not used in this State, but a similar action called detinue is.

Suits. Every action, except upon bills of exchange, negotiable instruments, etc., as above, founded on express or implied contract for the payment of money, must be brought in the name of the person really interested, whether he have the legal title or not. (*See Courts.*) Security for costs of suit is required of non-residents of the State, and may be given by acknowledgment signed by security, indorsed on the complaint or writ, approved by the officer issuing the same; or by deposit of money with clerk of court in which suit is brought, the amount to be determined by the court or officer taking the security, and same to be increased from time to time as necessary to cover costs. Upon failure to give such security required by the court, upon motion therefor, suit dismissed at cost of the attorney directing process to be issued.

Taxes become delinquent on the 31st of December of the year for which they were levied, and the lands may be sold by certain proceedings in the probate court commenced in the month of March following. The purchaser of lands sold for delinquent taxes receives from the collector a certificate of purchase containing a description of the property, the date and amount of assessement, taxes, costs, fees, etc., which after the expiration of two years from the date of the sale is exchangeable for a deed from the probate judge—which is prima facie evidence of title. Lands sold for taxes may be redeemed within two years by the owner, mortgagee or any person having a beneficial interest therein, by depositing with the probate judge of the county in which the lands were sold, the amount of purchase money, with interest at 15 per cent per annum, and all taxes which have accrued subsequent to the sale, and interest thereon at 8 per cent per annum; also all costs and charges. Whenever land is sold for State or county taxes, and from any cause such sale is invalid to pass title to purchaser, sale operates as transfer to purchaser of lien of State or county, or the property for payment of taxes for which sold. All cotton factories or cotton mills which shall be constructed in this State within five years shall be exempt from taxation for a period of ten years, provided such mills represent an investment of $50,000.

Wills. All wills of real or personal property must be in writing signed by the testator in presence of two witnesses. Unwritten will of personal property valid only when the property does not exceed $500 in value, and must be made during last sickness at his home. Persons present must be called on to witness that it is testator's will and must be reduced to writing by one of the witnesses within six days. Minor over eighteen may make a will of personal property. No will effective until probated. May be contested in probate or chancery court.

SYNOPSIS OF THE LAWS OF ARIZONA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by E. M. SANFORD, Attorney at Law, Prescott.

Note: The compilation of statutes in use in the Territory is "The Revised Statutes, 1887," supplemented, modified, repealed, or amended by the acts of the legislative assemblies of 1889, 1891, 1893, 1895, 1897, and 1899. The common law prevails where it is not modified or abrogated by statute, or is inapplicable to local conditions. Civil procedure is governed by a Code of Civil Procedure, and all crimes are statutory. The powers of local government are derived from and limited by acts of Congress organizing the Territory.

Accounts. Action must be commenced within three years after each item upon all accounts, except such as concern the trade of merchandise between merchant and merchant. Accounts stated draw interest at 7 per cent per annum. When action is founded upon open merchants account, if itemized is attached, verified by the party, his agent, or attorney, before an officer authorized to administer oaths, to the effect that such account is within the affiant's knowledge just and true, that it is due, and that all just and lawful offsets, payments, and credits have been allowed, is attached to the complaint, the same shall be taken as *prima facie* evidence thereof, unless defendant at least one day before trial file written denial under oath.

Acknowledgments made within Territory before clerk of court with seal, notary public, county recorder, or justice of the peace; without the Territory, but in United States, a clerk of court of record having seal, commissioner of deeds for Arizona, or notary public; without the United States, a minister, commissioner, or charge d'affaires of the United States, resident and accredited when made, a consul-general, consul, vice-consul, or commercial agent of United States where made; a notary public—are taken personally or by proof. Proof is by subscribing witness stating on oath certain facts. (*See form.*) All instruments affecting real or personal property must be acknowledged before recording. (*See Notary.*)

Actions. All actions shall be commenced by the filing with the clerk of courts of record of a complaint consisting of a concise statement of the facts constituting the cause of action, and summons shall be issued thereon within one year. Distinction in forms between law and equity pleadings are abolished. Pleading consists of complaint and answer—new matter set up in answer is deemed to be denied. Complaint seeking equitable relief must be sworn to, answer under oath may be waived.

Administration of Estates. No public administration. Where person dies intestate, letters of administration shall issue as follows: 1. To the surviving husband or wife, or some competent person he or she may select and request appointed. 2. To the children. 3. To the father or mother. 4. To the sisters. 5. To the grand-children. 6. To the next of kin entitled to share in the distribution. 7. To the creditors. 8. To any legally competent person. The executor or administrator, immediately after his appointment, must cause to be published in some newspaper of the county a notice to the creditors of the decedent requiring all persons having claims against decedent to exhibit them, with the necessary vouchers, to the executor or administrator, at the place and within the time mentioned in the notice. The time expressed in the notice must be ten months from its first publication, when the estate exceeds in value $3,000, and four months when it is less than that sum. Every claim when presented to the administrator for allowance must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due when presented or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant he must set forth in the affidavit the reasons why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths.

Affidavits. Whenever any oath or affidavit is or may be required or authorized by any law of this Territory, the same may be taken in any other State, Territory, or district of the United States before any judge or commissioner of a court of record, master in chancery, notary public authorized by the law of such State, Territory, or district to administer oaths.

Aliens. Aliens, or corporations not organized under the laws of some State or Territory of the United States, can not acquire, hold, or own real estate except such as may be acquired by inheritance or in good faith in the ordinary course of justice or collection of debts prior to March 3, 1887, except where treaty provides otherwise. No corporation or association more than 20 per cent. of the stock of which is or may be owned by persons not citizens of the United States can acquire, hold or own real estate in the Territory [U. S. Statute].

Appeals. Appeal from justice court is taken by giving notice in open court at time of judgment, or written notice thereof served on adverse party within five days after judgment—and within ten days after judgment filing bond in double amount of judgment, conditioned to pay any judgment or costs awarded on appeal. Appeals from District to Supreme Court are allowed in all cases where amount is $100 or over. Notice of appeal must be made in open court at term in which judgment is rendered and bond in double the sum of estimated costs in both courts to be filed within twenty days after the term. Bill of exceptions as to matter of law and statement of fact as to matter of facts required. Appeal may be without bond if appellant files affidavit of inability to give bond by reason of poverty. Execution may be stayed by giving bond in double the sum of the amount of judgment and costs. Transcript on appeal must be filed at first term of Supreme Court after expiration of term at which judgment was rendered in lower court.

Arbitration. Both common law and statutory arbitration. Under the statute, parties shall sign an agreement in writing submitting the matters in dispute to two arbitrators, each party naming one. Arbitrators shall possess the qualifications of a trial juror and not interested in the subject matter in dispute. If amount in dispute is $300 or less the agreement shall be filed with a justice of the peace of the county in which the defendant resides, or in which the controversy arose, if the dispute exceeds $300 then filed with the clerk of the district court in the county in which the controversy arose. Arbitrators and witnesses shall be sworn; after hearing evidence the arbitrators shall agree upon their award and reduce it to writing, filing the same with clerk or justice. If arbitrators fail to agree they may select an umpire. Unless right of appeal is reserved in the agreement to submit to arbitration, either party, upon application thereafter in writing, have a hearing de-novo in the court in which agreement

was originally filed. After an agreement to arbitrate is filed, the agreement may be pleaded in bar or against any defense in any suit brought by either party where the other shall have refused to proceed with the arbitration.

Arrest. Abolished in civil cases. Debtor fraudulently removing property out of Territory or concealing it may be prosecuted criminally.

Assignment by Insolvent Debtors. A general assignment by insolvent debtor must be recorded, have annexed an inventory, under oath, of all creditors, their residence, sum and consideration due each, how evidenced, with statement of debtor's entire estate, giving values. Insolvents may make assignments for benefit of such creditors only as will accept their pro rata in discharge of all liability. Any creditor having reason to believe that such debtor has concealed his property, may have him summoned before district or county judge, and examined under oath, etc. Any attempted preference of one or more creditors shall be deemed fraudulent and without effect. Concealment by debtor of his property from assignee, or transfer of property previous to and in contemplation of assignment, with intent to defraud his creditors, is made a felony. Assignee is governed in the administration of the trust by the ordinary rules governing trustees.

Attachment. Writ will issue in action upon a contract, express or implied, for the direct payment of money when the contract was made, or is payable in this Territory and is not secured by any mortgage or lien upon real or personal property. Writ may issue at any time before judgment after the filing of complaint, upon plaintiff or some one in his behalf filing affidavit that the defendant is indebted to plaintiff, the character of indebtedness, amount, and that the debt is due; that the attachment is not sought for wrongful or malicious purposes, and the action not prosecuted to hinder or delay any creditor of the defendant, and the filing of a bond with two sureties in an amount equal to amount sued for, which bond must be approved by the justice of the peace or clerk of the district court, as the case may be. Sureties can be compelled to justify upon notice filed at any time within five days after the levy of the writ. Affidavit and bond may be amended on motion to quash the writ at any time before final determination of the motion. A non-resident or foreign corporation may be attached for such indebtedness. An officer having a writ for service may require an indemnity bond from plaintiff before levying when ownership of property to be attached is disputed or claimed by third person. When more than one attachment is levied on same property writs take priority according to time of levy. (*See Liens, Garnishment.*)

Banks and Banking. Banks of discount and deposit (but not of issue) may incorporate under the statute relating to corporations in general, which title *vide*. Banking business may be carried on by individuals or firms, or by corporations organized for that purpose.

Banks, Savings and Loan. May be incorporated to loan and invest property. May hold lot and building in which business is carried on to value of $250,000; such as may accumulate on good faith loans and such personal property as may be required in transacting its business. To purchase and convey evidence of debt except National, Territorial, and Municipal bonds must have a capital of $100,000. Married women and minors may transact business with such banks. Are required to have license and are examined by the bank comptroller. Provisions are made for the contents of the charter. Must carry 15 per cent of deposits and make reports to the legislature.

Bills and Notes. Law Merchant governs, except that liability of indorser may be fixed without protest, etc., by the institution of suit within sixty days after maturity. In event of protest of a bill drawn in this Territory by a merchant upon his agent or factor living beyond the limits of the Territory, the holder may recover 10 per cent damages. The person principally liable may be sued alone or may be sued jointly with any other persons liable, but judgment can not be rendered against a person not primarily liable unless judgment shall have been previously rendered against the principal, except that if the principal be a non-resident or beyond the reach of process, judgment may be rendered in the first instance against those secondarily liable. Joint obligor may be released without releasing others. (*See Holidays.*)

Bonds. Any standard surety company, organized under laws of United States or of any State, may execute appeal, injunction, and other bonds in judicial proceedings within the Territory. Must file power of attorney with secretary of Territory, and in each county where business is transacted.

Chattel Mortgage. To be valid against others than the parties thereto, chattel mortgage must set out the residence of the mortgagor and the mortgagee, the rate of interest to be paid and time and place of payment of the debt secured, and be accompanied by the affidavit of both mortgagor and mortgagee that the mortgage is bona fide and made without design to defraud or delay creditors. Immediate delivery of the mortgaged property must be made to the mortgagee and the change of possession must be actual and continued, unless the mortgage or a true copy thereof shall be forthwith deposited and filed in the office of the recorder of the county where the property shall then be situate. Removal, sale, or other disposition of mortgaged property without consent of mortgagee entitles mortgagee to immediate possession of it, and such removal, transfer, or sale, or subsequent encumbrance is felony. Act, 1895, p. 30. If mortgagee permits mortgaged property to be removed to another county, he shall within one month record his mortgage in such other county. Chattel mortgage may be foreclosed, in justice court if amount of debt does not exceed $300; otherwise in district court. Mortgagee may obtain possession of property on default and sell after notice. Upon stock of goods, wares, and merchandise with continued possession in mortgagor is void.

Claim and Delivery. (*See Replevin.*)

Collaterals. No statutory provisions—common law prevails.

Community Property. (*See Conveyances.*)

Conditional Sales. Where title remains in vendor until purchase price is paid, void as to persons not parties thereto, and persons without notice, unless subscribed and filed in like manner as a chattel mortgage.

Contracts. (*See Bills and Notes.*) One or more obligors on a joint or joint and several instrument may be released without releasing the others, and may be sued separately under certain conditions without releasing the others. Married women may contract as if *sole*.

Conveyances. Conveyances of estate in lands for term more than one year shall be by an instrument in writing subscribed by party making it, or his agent, duly authorized thereto by writing. A conveyance is not effectual against creditors or bona fide purchasers unless recorded in recorder's office in county where land is situate. A conveyance purporting to convey a greater estate than the grantor has, passes only the estate that he actually has. A general grant or devise passes the fee unless expressly limited to a less estate. All deeds must be signed by both husband and wife.

Deed must be signed before at least two credible witnesses, or must be acknowledged before some officer authorized to take acknowledgment, and properly certified by him. The use of the word "grant" or "convey" implies the following covenants and none other: 1. That previous to the time of the execution of the conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee. 2. That such estate is at the time of the execution of such conveyance free from incumbrances. Married women seventeen years of age and upward may convey their own lands without being joined by their husbands. (*See Acknowledgment, Dower, Husband and Wife, Homestead.*)

Corporations in General. Any number of persons may associate themselves together and become incorporated for the transaction of any lawful business. Before commencing any business, except that of their own organization, two or more persons, who need not be residents of the Territory, must adopt articles of incorporation which shall be signed and acknowledged by them, and be recorded in the office of the county recorder of the county where the principal place of business is to be. The articles of incorporation must contain: 1. The name of corporators, the name of corporation, and its principal place of transacting business. 2. The general nature of the business proposed to be transacted. 3. The amount of capital stock authorized and the times when and conditions upon which it is to be paid in. 4. The time of the commencement and termination of the corporation. 5. By what officers or persons the affairs of the corporation are to be conducted, and the times at which they are to be elected. 6. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself. 7. Whether private property is to be exempt from corporate debts. Unless so exempted stockholders are liable for the debts of the corporation, in the proportion which their stock bears to the whole capital stock. Must be published for six days in some newspaper in the county where the principal business is located. The corporation may commence business as soon as the articles are filed for record in the office of the county recorder. Corporations for the construction of any work of internal improvement may be formed to endure for fifty years; those formed for other purposes shall not exceed twenty-five years in duration.

Corporations, Foreign. Any company incorporated under the laws of any other State or Territory, for any enterprise, business, pursuit, or occupation proposed to be carried on, or the principal office or place of business is proposed to be located within this Territory, shall make and file certified and duly authenticated copies of their articles of incorporation with the secretary of this Territory and the county recorder of the county in which its business or principal office is located. It shall be the duty of any association, company, or corporation organized or incorporated under the laws of any other State or Territory, or foreign country, for the purposes of engaging in or carrying on any enterprise, business, pursuit, or occupation, or acquiring, holding, or disposing of any property within this Territory, to file with the secretary of this Territory and the county recorder of the county in which such enterprise, business, pursuit, or occupation is proposed to be located, or is located, the lawful appointment of an agent, upon whom all notices and processes, including service of summons, may be served, and when so served shall be deemed taken and held to be a lawful personal service on such association, company, or corporation for all purposes whatsoever. No corporation such as is mentioned in Section 1 of this chapter shall transact any business whatsoever in this Territory until and unless it shall have first filed its articles of incorporation and appointment of an agent as required in the two preceding sections, and every act done by it prior to the filing thereof shall be utterly void. The appointment of such agent shall be embodied in a resolution duly adopted by such company, and shall be signed by the president, manager, or secretary thereof. All such agents shall be bona fide residents of the county in which their appointments shall be filed, and the full name and residence of each agent shall be stated in the resolution appointing him. If such agent absents himself for four consecutive months, and no new agent be appointed during that time, the right to do business shall cease.

Corporations, Insurance. May be organized under the statute in relation to corporations in general, subject to certain provisions peculiarly applicable to insurance companies. They shall not own real estate except: 1. That requisite in the convenient transaction of their business, not exceeding $50,000 in value. 2. By way of mortgage to secure loans or for moneys due. 3. That acquired at sales upon deed of trust or judgment obtained for loans or debts. 4. That conveyed in satisfaction of debts previously contracted in the course of their dealings. All real estate acquired except that requisite for convenient transaction of company's business shall be sold within five years after its acquisition unless a certificate be procured from the attorney-general extending the time. If company be liable for losses in amount equal to its capital stock, new insurance officers and directors, with notice, become liable therefor. Capital stock shall not be less than $100,000, 25 per cent of which must be paid in before issuing any policy, and balance in installments within twelve months. Company shall not take in any one risk a sum exceeding one-tenth of the capital stock. Dividends shall not be declared except on conditions.

Corporations, Railroad, are organized under a statute especially providing for them.

Corporations, Savings and Loan. (*See Banks and Banking.*)

Courts. Are the Supreme Court of the Territory, the district court of the four several districts, the district court for each County, the probate court for each County, justices of the peace. The supreme court consists of four justices, and its term commences second Monday in January. The terms of a judicial district court are: In the first district, at Tucson, second Monday of March, second Monday of September. Second district, at Florence, first Monday of April, first Monday of October. Third district, at Phœnix, first Monday of May, first Monday of November. Fourth district, at Prescott, first Monday in June, first Monday in November. The Territory is divided into four judicial districts, constituted as follows: First district, Cochise and Pima counties. Second district, Pinal, Graham, and Gila counties. Third district, Maricopa and Yuma counties. Fourth district, Mohave, Yavapai, Coconino, Navajo, and Apache counties. These courts are locally called the Territorial District Courts, and exercise a common law and chancery jurisdiction under code practice. Two terms a year are held in each county as follows: First district, in Cochise County, second Monday of May, second Monday of November. In Pima County, second Monday of March, second Monday of September. Second district, in Pinal County, first Monday of April, first Monday of October. In Graham County, second Monday of April, second Monday of October. In Gila County third Monday of April, third Monday of October. Third district, in Yuma County, fourth Monday of March, fourth Monday of September. In Maricopa County, first Monday of May, first Monday of November. Fourth district, in Yavapai County, first Monday of June, first Monday of November. In Coconino County, second Monday of March, first Monday of August. In Mohave County, first Monday of April, first Monday of September. In Apache County, first Monday in July. In Navajoe County

Holbrook, second Monday of September. In Santa Cruz County, new county, at Nogales, second Monday of January, second Monday of July. The district court of the several counties is a court of general jurisdiction, both civil and criminal. It has both original and appellate jurisdiction. Its original jurisdiction extends to all civil cases where the amount involved exceeds $100 exclusive of interest, and in all cases involving the title to or possession of real estate. Justice courts have general jurisdiction when amount in controversy does not exceed $300, except when title to real estate is involved.

Days of Grace. Three days of grace shall be allowed on all bills of exchange or promissory notes, assignable, or negotiable by law. (*See Holidays.*)

Depositions. Depositions may be taken on commission on by stipulation before any officer authorized to take acknowledgements of deeds. The officer shall certify that the answers of the witness were signed and sworn to before him, and shall seal them up in an envelope, together with the commission and interrogatories and cross-interrogatories, if any, and shall write his name across the seal and indorse on the envelope the names of the parties to the suit, and of the witnesses, and shall direct the package to the clerk of the court or justice of the peace, as the case may be. Depositions may be returned to the court either by mail or by hand. If sent by mail, the postmaster or his deputy shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Descent and Distribution. (*See SavingsBanks*). The law of community property prevails. The separate estate of an intestate, when he or she shall die leaving surviving no husband or wife, shall descend as follows: 1. To his or her children and their descendants. 2. If there be no children nor their descendants, then to his or her father and mother in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor and the other half shall pass to the brothers and sisters of the intestate, and to their descendants. But if there be none such, then the whole estate shall go to the surviving father or mother. 3 If there be neither surviving father nor mother, then the whole of the estate goes to the brothers and sisters and their descendants. 4. If there be none of the foregoing kindred, then a moiety of the estate goes to the paternal and a moiety to the maternal kindred. When an intestate leaves surviving a wife or husband the estate descends as follows: 1. If the intestate has a child or children or their descendants the surviving wife or husband takes one-third absolutely of the personal property and a life estate in one-third of the real estate, with remainder to their children or their descendants. The residue of the personal property and real estate goes to the children or their descendants. 2. If the intestate leaves no children, the surviving spouse takes all the personal property and one-half of the real estate in fee. The other half of the real estate goes according to the rules of descent first above set out. If, however, the intestate leave surviving neither father nor mother, then the whole estate goes to the surviving spouse. Children of the intestate's brothers, sisters, uncles and aunts, etc., take per capita. All property belonging to the community estate of the husband and wife shall go to the survivor, if the deceased spouse have no child or children; if the deceased have a child or children, his or her surviving spouse will take one half, and the other half goes to such child or children. The community property always passes charged with the debts against it. Intermarriage between man and woman to whom a child or children had before been born, and recognition by the father of such child or children legitimizes the child or children. Bastards inherit from the mother and transmit estates as if legitimate. The statute provides for the adoption of heirs. (*See Dower, Husband and Wife, Homestead.*)

Divorce. Decree may be granted dissolving marriage when the cause alleged shall be natural or incurable impotency of the body at the time of entering into the marriage contract, or any other impediment that renders such contract void. Divorce by the separation from the bonds of matrimony may be decreed: 1. When the husband or wife is guilty of excesses, cruel treatment, or outrages toward the other. 2. In favor of the husband, when the wife shall have been taken in adultery or where she shall have voluntarily left his bed and board for the space of six months, with the intention of abandoning him. 3. In favor of the wife for abandonment by the husband for six months, habitual intemperance, failure to provide the necessities of life by reason of idleness, profligacy or dissipation, or for adultery. 4. In favor of either when the other shall have been convicted of a felony and imprisoned in a penitentiary, provided six months have first elapsed after conviction, and provided further that the conviction was not had on the testimony of the party applying. No suit can be maintained unless the plaintiff has been an actual bona fide resident of the county in which the suit is brought for at least twelve months before the filing of the complaint.

Dower. Dower is abolished. See France vs. Conner, 16 Supreme Ct.

Executions. Upon a judgment of district court, executions may be issued to any county. Lien of duties from levy, and if on real property, the description is endorsed on execution and filed with county recorder. A range levy may be made upon all of stock under a certain brand. (*See Judgment, Liens.*) Proceedings supplemental to execution—when returned unsatisfied, creditor is entitled to an order requiring debtor to answer concerning his property, but not elsewhere than in the county of his residence. Third parties may, upon affidavit, be required to surrender property. Court or judge may order suit brought to determine the denial of owning or of having property.

Exemptions. Every head of a family is entitled to homestead not exceeding $2,500 in value, and every family $500 worth of personal property. A married person is allowed his or her wages earned within sixty days before suit exempt upon affidavit that they are necessary for support of his or her family. (*See Homestead, Liens.*)

Frauds and Fraudulent Conveyances. Agreements must be in writing and signed by the parties to be charged: 1. By an executor or administrator to answer for the debt of his testator or intestate out of his own estate. 2. By a person to answer for the debt, default or miscarriage of another. 3. To charge any person upon an agreement made upon consideration of marriage. 4. For sale of real estate or lease thereof for a term longer than one year. 5. Those which are not to be performed within the space of one year after the making thereof. Every gift, conveyance, or assignment, or transfer, or charge upon any estate, real or personal; any suit commenced on decree, judgment, or execution suffered or obtained, or any bond or other writing given with intent to delay, hinder, or defraud creditors, purchasers or other persons, shall to such persons be void. All bargains, sales, and other conveyances of lands, tenements, and hereditaments, deeds of settlement of marriage, deeds of trust, and mortgages, are void as to creditors and subsequent purchasers, without notice, unless properly recorded. The creditor must be a judgment creditor, and notice must be prior to date of judgment lien. A judgment creditor may be an innocent purchaser. Every gift, conveyance, assignment, transfer or charge made by a debtor which is not upon consideration deemed valuable in law shall be void as to prior creditors, if debtor had not then other property in the Territory sufficient to pay all his indebtedness. Not on that account, however, void as to subsequent creditors. No gift of any goods and chattels shall be valid unless duly acknowledged, or proven and recorded, or by will, or unless actual possession shall have come to and remained with the donor or some one claiming under him. Every sale made by a vendor of goods or chattels in his possession or under his control, unless accompanied by immediate delivery and be followed by actual and continued charge of possession, shall be *prima facie* evidence of fraud as against creditors or subsequent purchasers in good faith. No contract for loan or lease of goods orchattels for period of three months, shall be valid as against persons not parties, or those having notice, unless in writing and filed as chattel mortgages are required to be. Act 1895, p. 12. Fraudulent intent is a question of fact and not of law. Conveyance shall not be adjudged fraudulent merely because not for valuable consideration. If any person shall do or transact business as a merchant or trader, with the addition of the words agent, factor, company, or & Co., or words of like significance or import, and shall fail to disclose the name of his principal, or partner, or other person who may be interested in such business by a sign in letters easy to read, placed conspicuously at the place where such business is transacted, or if any person shall transact business in his own name, without any such addition, all the property, stock, money and choses in action used or acquired in such business except such property as may be exempt from execution, shall, as to the creditors of any such person, be liable for his debts, and be, in all respects, treated in favor of his creditors as his property. Criminal prosecution for fraud is provided. (*See Conditional Sale.*)

Garnishment. Writ may issue: 1. Where writ of attachment has issued. 2. Upon affidavit that the debt is just due, and unpaid, and that defendant has not, within affiant's knowledge, property in his possession subject to execution sufficient to satisfy such debt, and that the writ is not sued out to injure either the defendant or garnishee. 3. Upon judgment, when affiant makes affidavit that the defendant has not, within his knowledge, property in his possession within this Territory sufficient to satisfy said judgment. Proceedings under subdivision 2 requires a bond in double the amount of the debt, conditioned that plaintiff will prosecute the suit to effect, and pay all damages and costs that may be adjudged against him for wrongfully suing out the garnishment. The proceedings are docketed and judgment rendered as if in an independent proceeding. (*See Attachment.*)

Holidays. Legal holidays are January 1, February 22, July 4, Thanksgiving, May 30, December 25, every Sunday, and general Territorial election day, or any special election day that may be called by the governor, and any day appointed by the President or governor. Any promissory note, bank check, bill of exchange, acceptance, or other negotiable instrument, made payable at any future period, which falls due on any of these days mentioned, shall be considered due and collectible on the day following; and if January 1, February 22, July 4, December 25, or May 30 shall fall upon Sunday, then the Monday following shall be considered as a legal holiday.

Homestead. Head of family, husband or wife, if married, may select from community or separate property, by filing declaration, under oath, with county recorder. If claimant is unmarried, and head of family, may file like declaration. Value must not exceed $2,500. Until declaration is filed, there is no homestead.

Husband and Wife. All property, both real and personal, of the husband or wife, owned or claimed by him or her before marriage, and that acquired afterward by gift, devise, or descent, as also the increase, rents, issues, and profits of the same, shall be his or her separate property. The earning and accumulations of the wife and her minor children in her custody while she has lived or may live separate and apart from her husband, shall also be the separate property of the wife. All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise, or descent, or earned by the wife and her minor children while she has lived or may live separate and apart from her husband, shall be deemed the common property of the husband and wife, and during the coverture may be disposed of by the husband only. Married women of the age of twenty-one years and upwards shall have the whole and exclusive control of her separate property, and the same shall not be liable for the debts, obligations, or engagements of the husband, and may be contracted, sold, transferred, mortgaged, conveyed, devised, or bequeathed by them in the same manner and with like effect as if they were not married. Married women of the age of twenty-one years and upwards shall have the same legal rights as men of the age of twenty-one years and upwards, except the right of suffrage and of holding office, and except the right to make contracts binding the common property of the husband and wife; and shall be subject to the same legal liabilities shall not be so construed as to prohibit women from voting at school elections or holding office as school trustees as now provided by law. Married women may convey separate property if seventeen years of age or older. (*See Dower, Conveyance.*)

Insurance. Insurance companies must give bond in sum of $15,000 for security of policy holders, or in lieu thereof, $15,000 of county or territorial interest bearing bonds must be deposited with territorial treasurer. Acts 1895, p. 35.

Interest. May contract, in writing, for any rate of. No usury laws. When no express contract, on bond. bill, note, or instrument of writing, or judgment, for money lent, or due on settlement of accounts from date of ascertained balance, and money received for use of another, interest is computed at 7 per cent per annum.

Judgments. Judgments of district courts become a lien upon all real estate of judgment debtor in the county as soon as entered and docketed. Upon filing with the clerk of the district court a transcript of judgment from justice court or of district court of another county, the same becomes a lien on all real estate of judgment debtor in the county. No execution can be issued on any judgment after the expiration of five years from the date of its rendition and entry, unless such judgment be revived by *scire facias* or action for debt be brought thereon within such five years.

Judicial Bonds. (*See Bonds.*)

Levy. (*See Executions.*)

Licenses. Commercial travelers are required by statute to take out a license, but this legislation has been declared illegal by the courts and is not enforced.

Liens. All persons who may labor or furnish materials in the construction or repairing of any building, superstructure, canals, dams, mines, or other improvement, or cuts cordwood, shall have a lien on the same, and in case of buildings and superstructures, on the lot of land whereon the same is situate and connected therewith. To fix and secure the lien, the person performing labor or furnishing material must, within sixty days after the completion of such labor or the furnishing of materials, file his contract in the office of the county recorder where the property

is situate. If the contract be verbal, a duplicate copy of the bill of particulars should be made, under oath, and one delivered to the recorder and filed for record and the other furnished the party owing the debt, or his agent. Suit to foreclose such liens must be commenced within six months after filing the same in the recorder's office. In case of the levy of writ of attachment or execution, clerks, laborers, and employes of debtors have a preference claim for wages for services performed sixty days before levy of writ, not exceeding $200, upon filing notice of claim unpaid with creditor, debtor, and officer executing writ. Proprietors of hotels, boarding houses, and lodging houses have special lien on all property or baggage deposited with them by guests for price of guests' entertainment. Agister and liverymen have lien by statute. (*See Judgment, Mortgage.*)

Limitations. Actions for the recovery of real estate must be commenced in five years. Other actions must be brought as follows: Within one year: 1. Actions for injuries done to the person of another. 2. Malicious prosecution, false imprisonment, injuries to character or reputation by libel or slander. 3. Damages for seduction or breach of promise of marriage. 4. Injuries to person of another where death ensued from such injuries. Within two years: 1. Trespass. 2. Action for trover and conversion. 3. Claim and delivery of personal property. 4. Actions upon judgments and decrees of courts without the Territory, and upon instruments in writing executed without the Territory. Within three years: 1. Actions for debt where the indebtedness is not evidenced by contract in writing. 2. Actions upon stated or open accounts. Within four years: 1. Action for the penalty or for damages on the penal clause of a bond to convey real estate. 2. Actions by one partner against a copartner for settlement of the partnership account, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents, and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together. Within five years: Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing executed within this Territory.

Minors. (*See Savings Banks.*)

Mortgages. Mortgage may contain power of sale. Whether it does or not, mortgage may be foreclosed by suit in district court. Failure of mortgagee to lawfully release a satisfied mortgage for seven days after demand for the release, subjects him to liability for $100 and actual damages. Mortgages on real estate are executed, acknowledged, and recorded as conveyances of real estate. (*See Conveyances, Chattel Mortgage, Acknowledgments.*)

Notary Public. In all certificates and acknowledgments the date of expiration of commission must be stated, as "commission expires ——"

Notes and Bills of Exchange. (*See Bills and Notes.*)

Partnerships. Must file certificate showing names of partners with county recorders. Foreign partnerships may do so.

Powers of Attorney. No special statutory provisions relative to. To confess judgment must be executed subsequent to maturity of debt confessed, and must be acknowledged. To convey lands or release mortgages should be acknowledged as deeds, and recorded.

Probate Law. (*See Savings Banks and Administration of Estates.*)

Protest. Liability of drawer or indorser of bill or note may be fixed by regular protest and notice, etc., according to the usages and custom of merchants. (*See Bills and Notes.*)

Replevin. Is denominated "claim and delivery" for possession of specific personal property which has not been seized under any process, execution or attachment against the property of the plaintiff.

Seals. Addition or omission of seals or scrolls to instruments of writing in no way affect the force and validity of the instrument. Instruments executed by corporations must have a corporate seal attached.

Suits. (*See Actions.*)

Taxes. Aside from those levied by legislative enactment for specific purposes, as for the construction and maintenance of public institutions, etc., Territorial taxes are levied by the Territorial Board of Equalization; county taxes by the boards of supervisors of the several counties, and city taxes by the common councils of the various cities. Railroads are valued for the purpose of taxation by the Territorial Board of Equalization. Other property is valued by county assessors. The assessing of value begins in February of each year. Taxes are assessed on the fourth Monday of August in each year. The lien attaches on the first Monday of March in each year. Taxes become due not later than the third Monday in September, and become delinquent if not paid on the third Monday of December. The penalty for delinquency is 5 per cent. On or before the first Monday of March of each year, the tax collector shall publish a notice that unless taxes, penalties, and costs which have become delinquent are paid the property will be sold at public auction at a time and place therein designated. The notice must be published for three successive weeks. The sale must not be less nor more than twenty-eight days after the first publication of the list and notice. Real estate sold for taxes may be redeemed within one year.

Transfer of Corporation Stocks. (*See Corporations.*)

Wills. Every person aged twenty-one years or upward, or who may be or may have been lawfully married, being of sound mind, shall have power to make a last will and testament. Wills must be in writing, signed by the testator, or by someone for him, in his presence and by his direction, and must be attested by two or more credible witnesses above the age of fourteen years, in the presence of each other and the testator. When the will is wholly written by the testator, no witnesses are necessary. Nuncupative wills may be made when property willed does not exceed in value $50, unless it be proved by three credible witnesses that the testator called on some person to take notice and bear testimony that such is his will, and that the testimony, or the substance thereof, was committed to writing within six days after the making of such will; in such case the amount willed is not limited. Wills are revocable by subsequent will, codicil, or declaration in writing, executed with like formalities as in execution of will, or by testat or destroying, canceling, or obliterating the same, or causing it to be done in his presence, or by subsequent marriage, and no provision is made for wife. Foreign wills, the probate whereof is duly authenticated, may be probated here.

SYNOPSIS OF THE LAWS OF ARKANSAS

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. Rose, Hemingway & Rose, Attorneys at Law, Little Rock. (*See Card in Attorneys' List.*)

Accounts verified by the plaintiff as just and correct prove themselves in suits thereon unless denied under oath.

Acknowledgments may be taken within the State before the supreme or circuit court, or a judge thereof, or clerk of any court of record, or a justice of the peace or notary public; elsewhere in the United States before any court having a seal, or clerk of such court, notary public, mayor having a seal, or commissioner of Arkansas; without the United States before any court having a seal, mayor of a city having a seal, United States consul, or any officer authorized by the laws of such country to probate conveyances of real estate, provided he has a seal.

Actions. Suits are prosecuted under a reformed code of civil procedure differing from the New York code chiefly in maintaining the distinction between law and equity.

Administration of Estates. Executors and administrators must be residents of the State and must give bond in double the value of the property. Foreign executors and administrators can maintain actions in our courts. Claims are paid in the following order: First, funeral expenses; second, expenses of last illness; third, judgments which are liens on the lands of the deceased; fourth, demands presented within one year; fifth, demands presented within two years. All demands not presented in two years are barred. Demands must be authenticated by an affidavit to the effect that nothing has been paid or delivered toward their satisfaction except what is credited thereon, and that the sum demanded, naming it, is justly due. Demands must first be presented to the executor or administrator, and if disallowed by him may be presented to the probate court, or sued upon in any court of competent jurisdiction.

Affidavits in this State are made before a judge, justice of the peace, notary public, or clerk of the court; without the State before a judge, mayor, notary public, justice of the peace or commissioner for this State.

Aliens may hold and transmit property in all respects as residents.

Appeals may be taken from a justice of the peace to the circuit court in thirty days; from the probate court to the circuit court in one year; from the county court to the circuit court in six months; and from the circuit or chancery courts to the supreme court in one year, and may be prosecuted with or without supersedeas, which is granted on filing bond.

Arbitration. Controversies may be submitted to arbitration, and the award of the arbitrators is filed in court, and is subject to review on equitable principles only, and not for matters of form. When not set aside they are entered of record and become the judgment or decree of the court.

Arrest. Defendants may be arrested for debt only when the plaintiff files an affidavit charging that the debt was fraudulently contracted; that it is just, giving its amount, and that he believes that the defendant is about to depart from the State, and, with intent to defraud his creditors, has concealed or removed from the State his property or so much thereof that the process of the court after judgment can not be executed; or that the defendant has money or securities in the possession of himself or of others for his use, and is about to depart from the State not leaving sufficient property therein to satisfy the plaintiff's claim. Bond must be given conditioned to pay the defendant all damages that he may sustain if wrongfully arrested.

Assignments for the Benefit of Creditors may be general or partial, with or without preferences, and where all the debtor's property is conveyed, may exact releases as a condition of preference. The assignee, must file an inventory of the property assigned and give a bond conditioned that he will execute the trust confided to him, sell the property to the best advantage and pay the proceeds to the creditors mentioned in the assignment according to its terms, and faithfully perform his duties according to law. He must sell within 120 days all property except the choses in action, which he is required to collect, the sale to be at public auction after thirty days' notice. Assignments are vitiated by the fraud of the assignor alone, or by any provision varying from the requirements of the statute. Attacks upon them are made by proceedings in equity, and, if they are set aside, the proceeds are distributed equally among all the creditors. Assignees close up their accounts under the direction of the chancery courts. Corporations can not prefer creditors.

Attachments may be sued out where the defendant is a foreign corporation or non resident, or has been absent from the State four months, or has left the State with intent to defraud his creditors, or has left the county of his residence to avoid the service of summons, or conceals himself so that summons can not be served on him, or is about to remove or has removed a material part of his property out of the State, not leaving enough to satisfy his creditors, or has sold, conveyed or otherwise disposed of his property, or suffered it to be sold with the fraudulent intent to cheat, hinder or delay his creditors, or is about so to do. They are obtained by filing an affadavit stating the nature of the plaintiff's claim, that it is just, its amount and the existence of the ground, and by giving bond conditioned to pay all damages the defendant may sustain if the attachment is wrongfully sued out. The defendant is allowed to traverse the attachment, and the affidavit and traverse then stand as pleadings upon which the issue is tried. If the attachment is dissolved, the defendant may have an assessment of damages upon the bond in the same suit. Persons claiming the attached property may interplead in the same action. Attachments may be sued out before the debt is due where the defendant has sold, conveyed, or otherwise disposed of his property, or permitted it to be sold with the fraudulent intent to cheat, hinder or delay his creditors, or is about so to do, or is about to remove his property, or a material part thereof, out of the State with the intent of cheating, hindering or delaying his creditors.

Banks. Banking may be carried on by individuals or by corporations organized under the general incorporation law of the State, or by national banks. The State laws prescribe no special regulations for banking.

Bills of Exchange and Promissory Notes. No person can be charged as an acceptor of any bill of exchange unless his acceptance shall be in writing. If the acceptance is written on another paper than the bill, it shall not bind the acceptor except in favor of the person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration. Every holder of a bill presenting it for acceptance may require an acceptance on the bill; otherwise the bill can be protested for non-acceptance. Notwithstanding the above provisions any one promising to accept a bill is liable to any person to whom a promise to accept it may have been made; and who, on the faith of the promise, has drawn and negotiated the bill. Any

person on whom a bill is drawn, and to whom the same may be delivered for acceptance, who shall destroy it or refuse within twenty-four hours or such time as the holder may allow to return the bill accepted or not accepted to the holder, shall be deemed to have accepted the same. The following are the holidays: Sunday, Christmas, Fourth day of July, Washington's Birthday, and Thanksgiving day. When the bills become due on any of these days, they are payable the next day preceding. But the holders need not give the notice of dishonor until the next day after such holiday. The following damages are allowed where a bill is protested for non-acceptance or non-payment: If the bill is drawn on any place in this State, two per cent; if payable in the States of Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, or Missouri, or any point on the Ohio River, 4 per cent; if drawn on any other place in the United States, 5 per cent; if beyond the limits of the United States, 10 per cent. If the bill be drawn by any person at any place within this State, at the rate of 2 per cent; if drawn by any person at any place without this State, but within the limits of the United States, 6 per cent; if drawn by any person without the limits of the United States, 10 per cent. The holder of any bill protested for non-payment or non-acceptance is entitled to costs of protest and interest at the rate of 10 per cent per annum on the amount of the bill from date of protest. The term *Bill of Exchange* includes all drafts or orders drawn by one person on another for the payment of a sum of money specified therein. Bills and notes given for patented machines, implements, substance, or instruments of any kind, given to any citizen of this State, are not commercial paper, unless executed on a printed form, and showing for what consideration they were executed. This applies to patent rights and rights to use any patented thing of any kind. But this provision does not apply to merchants and dealers who sell patented things in the usual course of business. All blank assignments are taken to have been made on such day as shall be most to the advantage of the defendant. In other respects the general rules of commercial law apply.

Bills of Lading and Warehouse Receipts are not allowed to be issued until the property is actually received, and are negotiable by written endorsement as bills and notes, unless the words "not negotiable" are plainly written or stamped on their face.

Chattel Mortgages may be acknowledged and filed as other mortgages, or they may be endorsed "This instrument is to be filed but not recorded," signed by the mortgagee, and may then be filed in the recorder's office with the same effect as though recorded. Mortgages of personal property reserving in the mortgagor the power of disposition are fraudulent. (*See Mortgages.*)

Collaterals are governed by the law merchant.

Contracts touching commercial matters are governed by the law merchant.

Conveyances may be either witnessed by two witnesses or acknowledged. (*See Acknowledgments.*) If witnessed they are proved by the oath of a witness, and are then entitled to record as though acknowledged. Dower can be relinquished only by the wife joining the husband. The wife may convey property acquired since October 30, 1874, by deed as a single person without her husband joining her, or by joining with him in the form above. The wife may convey by power of attorney and make executory contracts of sale. Deeds which have been recorded and are properly acknowledged prove themselves. Any substantial departure from the form of acknowledgments prescribed by the statute, such as the omission of the words "consideration" or "purposes," makes the acknowledgment and record void; but statutes have been passed from time to time curing defective acknowledgments previously made.

Corporations are organized only under general incorporation laws. Business corporations must consist of not less than three persons who shall elect a board of directors. The president and secretary are to be elected by the board and the president must be a member of it. The secretary and treasurer must reside and keep the books of the company within the State. The articles of association must be signed by the president and a majority of the directors, and must be accompanied by a certificate signed in a like manner and sworn to by the president and a majority of the directors, setting forth the purpose of the corporation, the amount of its capital stock, the amount actually paid in, the names of its stockholders and the number of shares held by each respectively, and the articles and certificate must be filed in the office of the secretary of State, and a duplicate with the clerk of the county in which the corporation is to transact business. The stock can be transferred only upon the company's books, and a record of the transfer has to be deposited with the county clerk in order to be valid as against creditors of the transferor. The corporation has a lien on its stock for debts due from the stockholders. The president and secretary are required to file with the county clerk an annual statement of its financial condition, and in case of a failure to do so become liable for its debts. If the directors declare a dividend when the corporation is insolvent they become liable for all the corporate debts. Any corporation which is insolvent or has ceased to do business may be wound up on the suit of any creditor or stockholder by a decree of the chancery court. Preferences by insolvent corporations are forbidden. Shares of stock are in denominations of $25 or $100. Foreign corporations before doing business in the State must file with the Secretary of State a certified copy of their articles and a certificate appointing an agent for service and naming a place of business within its limits.

Courts. The supreme court is held at Little Rock and has jurisdiction of appeals from the circuit and chancery courts. In some counties separate courts of chancery have been established, but in the greater number the circuit courts exercise common law and chancery jurisdiction. The estates of deceased persons are entrusted exclusively to the probate courts, with right of appeal to the circuit and thence to the supreme court. Claims against counties are heard by the county court, as also matters touching paupers and the like. The justices' courts have jurisdiction of matters of contract not exceeding $300, and matters of tort not exceeding $100. Two terms of the circuit and chancery court and four of the county and probate courts are held in each county per year.

Days of Grace are controlled by the law merchant.

Depositions may be taken in the State before any judge or clerk of a court of record, justice of the peace, mayor, or notary public; out of the State before a commissioner for this State, judge, justice of the peace, mayor, notary public or person commissioned by the court or by consent of parties.

Descents and Distributions. Property descends to children and their descendants in equal parts; if no children, then to father, then to mother, then to brothers and sisters and their descendants in equal parts, and in default of such to the nearest lineal ancestor or his descendants in equal parts per stirpes. In default of heirs the whole property goes to husband or wife, and in their default to the State. If the estate is ancestral it goes to the blood of the ancestor from whom it was derived. Relations of the half blood inherit equally. Heirs take as tenants in common.

Divorces are granted for, first, impotency; second, desertion for one year without cause; third, another wife or husband living at the time of the marriage; fourth, conviction of felony or other infamous crime; fifth, habitual drunkenness for one year; cruel and barbarous treatment, or such indignities as render the plaintiff's condition intolerable; sixth, adultery. Proceedings must be had in the county where the plaintiff resides and the plaintiff must have resided in the State one year before the commencement of the action, and must show that the cause of divorce occurred in this State or was a ground for divorce in the State where it occurred, unless plaintiff was then a resident of this State, and that the cause of divorce occurred within five years before the beginning of the suit. Claims for alimony may be asserted either in the suit for divorce or by a separate action. Upon a divorce each party is required to surrender to the other all property acquired from the other, and if the wife procures the divorce she takes one-third of the husband's real and personal property.

Dower. Where there are children the wife takes one-third of the husband's personal estate absolutely and one-third of the real estate of which he was seized at any time during the marriage, for life. Where there are no children she takes in a new acquisition one-half of the real and personal estate absolutely as against heirs, or one-third absolutely as against creditors. If it is an ancestral estate she takes one-half for life against heirs and one-third for life against creditors.

Executions from the circuit court are returnable in sixty days; those from justices' courts within thirty. They may be stayed for six months by giving bond. They are a lien on the property of the defendant in the county from the time they come to the officer's hands. The officer before levying on personal property, the title to which is doubtful, may require the plaintiff to give him an indemnifying bond, and then suit must be brought by the claimant upon the bond. The defendant and other judgment creditors have one year in which to redeem from the sale of real estate. In case the writ is returned nulla bona the plaintiff may proceed by bill of discovery against the defendant and examine him on oath, and enforce a surrender of concealed property by imprisonment.

Exemptions. Unmarried persons are entitled to $200 and married persons and heads of families to $500 in selected articles of personal property as exempt against debts by contract. Persons who are married or heads of families are entitled to a homestead as against all debts, except the purchase-money, specific liens, laborers' and mechanics' liens, taxes and claims for trust funds converted. The homestead in the country is not to exceed 160 acres, and in town not to exceed one acre, nor to be worth more than $2,500, but the country homestead is not to be reduced to less than 80 acres nor the town homestead to less than one-fourth of an acre, regardless of value. The homestead goes to the widow and minor children, after the husband's death. The homestead can only be conveyed by deed in which the wife joins and which is acknowledged by her, and if the husband neglects to claim the homestead the wife may do so.

Fraud. The English statute of fraudulent conveyances has been re-enacted in this State.

Garnishments may be sued out pending suit upon giving bond in double the amount garnished, or after judgment without bond.

Holidays. (*See Bills of Exchange and Promissory Notes.*)

Husband and Wife. (*See Married Women.*)

Insolvency. Any insolvent debtor may apply to the chancery court for the appointment of a receiver, who may have all attachments dissolved, take possession of all the debtor's assets, and pay the proceeds, first, to laborers and employees whose claims may have accrued within three months; second, to all creditors who will execute a release; and third, to the creditors generally.

Interest. The legal rate of interest is 6 per cent, but parties may contract in writing for not exceeding 10 per cent. Interest exacted in excess of 10 per cent forfeits the debt. In computing the interest commissions paid to the agent of the lender are counted as interest. Where usury is charged the borrower may go into equity and have the debt and securities cancelled without tendering the amount lawfully due. Judgments bear the same rate of interest as the obligation sued on. Judgments against counties bear no interest.

Judgments (*see Interest*) are liens upon the real estate of the debtor in the county where rendered for three years. The lien may be renewed and continued for three years by scire facias. Judgments of the United States and other courts can be made liens on lands in counties other than that where they are rendered by filing a certified copy in the office of the circuit clerk.

Limitations. Suits for the possession of real estate must be brought within seven years, saving to minors, married women, and lunatics three years after their disabilities are removed. Actions for recovery of lands sold at judicial sales must be brought within five years, saving to minors and lunatics three years after removal of disabilities. Actions for the recovery of lands held under tax title must be brought in two years. Actions for forcible entry and detainer, on contracts not in writing, for trespass and for libel, within three years. Actions for criminal conversation, assault and battery, false imprisonment, and slander, within one year. Actions on written instruments, within five years; on judgments, within ten years; on bonds of executors and administrators, within eight years. In all cases, except actions for the recovery of lands, minors and lunatics have, after removal of their disability, the statutory period in which to sue. Verbal promises or acknowledgments do not take a claim out of the statute. One year is allowed after dismissal of a suit in which to begin a new action. No person can avail himself of a disability which did not exist at the time the right of action accrued. No endorsement of payment made by the payee or on his behalf is sufficient proof to take the case out of the statute.

Married Women. The property, real and personal, of married women remains their separate estate as long as they choose, and may be devised or conveyed without the husband's assent, and is not subject to his debts. If she dies without making any disposition of her real estate, he is entitled to curtesy. She may carry on any business or perform any services on her own account, and her earnings are hers, and she may sue alone in respect of her separate property. She can bind herself by contract only in reference to her separate estate or business. She can not enter into partnership with her husband. If she does not file a schedule of her personal property, the burden of proof is on her to show that it is hers.

Mortgages are not liens as against any one, though such person has actual notice of their existence, until they are acknowledged in the form prescribed and filed for record. Mortgages of real estate are recorded in the county where the land lies, and mortgages of personal property in the county of the mortgagor's residence. If the mortgagor of personalty is a non-resident the mortgage is recorded in the county where the property is situate. Sales under mortgages and deeds of trust can be made only after appraisement, and the property must bring two-thirds of the appraised value. In case it is offered and fails to bring the required amount real estate may be offered again after one year and personal property after sixty days, and is then sold for what it will bring. The mortgagor of real estate has one year from the date of sale in which to redeem.

Notes and Bills of Exchange. (*See Bills of Exchange and Promissory Notes.*)

Powers of Attorney. Lands may be conveyed by power of attorney, which is acknowledged as deeds and recorded in the county where the lands lie.

Probate Law. (*See Administration of Estates.*)

Protests. (*See Bills of Exchange and Promissory Notes.*)

Replevin. The plaintiff in replevin may file an affidavit describing the property, stating its value and the amount of damages he expects to recover, his title, that the property is wrongfully detained by the defendant, that it has not been taken for a tax or under process against plaintiff, and that his cause of action has accrued within three years, and upon giving bond in double its value, the property shall be taken from the defendant and given to the plaintiff pending the suit, unless the defendant within two days after it is taken gives a cross-bond.

Taxes are a lien between vendor and purchaser from the first Monday in December. They are payable between the first Monday in January and the 10th of April. In case of non-payment a penalty of 25 per cent is added. Lands may be redeemed within two years by paying taxes, penalty, and costs, with 10 per cent interest. Minors, lunatics, and persons in confinement may redeem within two years after their disability is removed.

Wills. A will must be subscribed by the testator or by some person for him at his request in the presence of two attesting witnesses, or he must acknowledge it to be his will to each of them. He must declare at the time of his subscription or acknowledgment to the witnesses that the instrument is his will and testament. The witnesses must sign their names at the end of the will as witnesses at the request of the testator. If, however, the entire will is in the hand-writing of the testator, it need not be attested, but may be proved by three witnesses familiar with the hand-writing. Such will, however, can not be pleaded in bar of an attested will. Wills are revoked by marriage and birth of issue, unless provision for such issue is made by settlement, or is provided for in the will. The will of an unmarried woman is revoked by her marriage. After-born children, not mentioned in the will, take their regular distributive share. If the testator fails to mention in his will any child, or its legal representatives, living at the time of executing the will, he shall, as to such child, or its representatives, be deemed to have died intestate, and such child, or its representatives, is entitled to its regular share.

SYNOPSIS OF THE LAWS OF CALIFORNIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. DORN & DORN, Attorneys and Counselors at Law, San Francisco. (*See Card in Attorneys' List.*)

Accounts. An account is assignable, and the assignee may maintain an action thereon, although the account is assigned merely for collection. No action or proceeding thereon abates by the transfer of any interest therein, but may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted. Actions upon an account are barred within two years, and each item of the account becomes outlawed two years after its respective date. Where, however, the action is brought to recover a balance due upon a mutual account, the cause of action is deemed to have accrued from the last item proved in the account on either side. An account consisting of debits on the one hand, and payments on the other, is not such a mutual account. (*See Actions.*)

Acknowledgments. Before an instrument can be recorded, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or proved by a subscribing witness. The proof or acknowledgment of an instrument may be made in this State within the city, county or district for which the officer was elected or appointed, before either: (1) A judge or clerk of a court of record; or (2) a county recorder; or (3) a court commissioner; or (4) a notary public; or (5) a justice of the peace. If taken without this State, but within the United States, and within the jurisdiction of the officer, before either: (1) A justice, judge, or clerk of any court of record of the United States; or (2) a justice, judge, or clerk of any court of record of any State; or (3) a commissioner appointed by the governor of this State for that purpose; or (4) a notary public; or (5) any other officer of the State where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment. Acknowledgments may be taken without the United States, before either: (1) A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or (2) a consul, vice-consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or (3) a judge of a court of record of the country where the proof or acknowledgment is made; or (4) commissioners appointed for such purposes by the governor of the State, pursuant to special statutes; or (5) a notary public. Officers taking and certifying acknowledgments, or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the name of their office, also their seals of office, if, by the laws of the State or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. If acknowledged before a justice of the peace, to be used in any other county than the one in which the justice resides, it must be accompanied by a certificate of the clerk of the county showing that at that time the justice was authorized to take the same, and that the clerk is acquainted with his handwriting, and that the signature is genuine. An officer taking proof of the execution of any instrument must, in his certificate endorsed thereon, or attached thereto, set forth all the matters required by law, to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

Actions. (*See Attachment and Arrest.*) All civil actions, except cases of which the supreme court has original jurisdiction, are commenced by filing a complaint, upon which a summons must, within one year, be issued. A copy of the summons and complaint must be served upon each defendant. If the defendant is served in the county where the action is brought, he has ten days within which to plead to the complaint; if served out of the county and within the State, he has thirty days. In all actions in rem, and in all actions where the defendant is a foreign corporation, having no managing or business agent, cashier, or secretary within the State, or in actions which relate to, or the subject of which is real or personal property in this State, in which a person defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part in excluding such person from any interest therein, the defendants may be served by publication of the summons, in case they reside out of the State or can not be found therein. The summons must be published at least once a week for two months in a newspaper of the county before the service is complete. An action must be dismissed unless the summons has been served and return made thereon within three years after the commencement of the action.

Administration of Estates. All the property, real and personal, of a decedent dying intestate, passes to the heirs of the intestate subject to the control of the probate court and to the possession of any administrator appointed by that court for the purposes of administration. Every estate and interest in real or personal property to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will. Upon the admission of a will to probate, letters testamentary are granted by the superior court to the executor named in the will, or in case the person named is dead or incapable or unwilling to act, letters testamentary are issued to an administrator with the will annexed, appointed by said court. The person to whom letters testamentary are issued must execute the trust as provided for in the will, under the supervision and control of the court. Bonds are required of such person for the faithful performance of his duty, unless waived by the will. In cases of persons dying intestate, letters of administration are issued to the person entitled thereto, in the following order: 1. To surviving husband or wife, or some person named by either. 2. To the children. 3. To the father or mother. 4. To the brothers. 5. Sisters. 6. Grandchildren. 7. Next of kin entitled to share in the distribution of the estate. 8. The public administrator. 9. Creditors. 10. Any person legally competent. If any person entitled to administration is a minor or an incompetent person, letters must be granted to his or her guardian, or to any other persons entitled to letters of administration in the discretion of the court. Administrators are required to give security, and must, from time to time as directed by the court, render accounts to the court of their proceedings. Notice must be given by the administrator by publication to all the creditors to come in and prove their claims. The creditor failing to present his claim within the time limited is forever barred. The administrator must pay the debts of the decedent, and if sufficient funds do not come into his hands for that purpose, he may, under the direction of the court, sell the personal property, or if that be insufficient, then the real property for that purpose. Provision may be made for the support of the family during the pendency of the proceedings. The executor, under a will, must pay the legacies resorting to the property in like manner as for debts.

Affidavits. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding; to obtain a provisional remedy, the examination of a witness or a stay of proceedings, and for certain other statutory purposes. "*Affidavits* may be sworn to before the same officers enumerated in the paragraph on 'Acknowledgments,' but if taken before a judge of the court of another State or in a foreign country the genuineness of the signature of the judge and the existence of the court, and the fact that such a judge is a member thereof must be certified to by the clerk of the court under the seal thereof."

Aliens eligible to become citizens of the United States, while bona-fide residents of this State shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of all property other than real estate as native born citizens, provided that the legislature may, by statute, provide for the disposition of real estate which shall hereafter be acquired by such aliens by descent or devise.

Appeals. The right of appeal exists from any judgment or final order after judgment made by the superior court to the supreme court. Writs of injunction, review, habeas corpus, and mandate are issued by the courts of record of the State. The appeal must be taken within six months after judgment, if the appeal is taken upon the judgment roll and from the judgment; if upon a bill of exceptions, must be taken within sixty days after final judgment; if upon a statement upon motion for a new trial, within sixty days after the order granting or refusing a new trial; An appeal may be taken from the judgment of a justice's or police court to the superior court of the county within thirty days after the rendition of the judgment, and is taken by filing a notice with the judge and serving the same on the adverse party. If the appeal is upon questions of law alone, a statement of the case must be filed within ten days and thereafter settled. If the appeal is on questions of fact, or on questions of both law and fact, no statement is necessary, but the action is tried anew in the superior court.

Arbitration. Persons capable of contracting may submit to arbitration any controversy that might be the subject of suit between them, except a question of title to real property. This qualification, however, does not include questions relating merely to the partition or boundaries of real estate. The submission to arbitration must be in writing, and it may stipulate that it be entered as an order of the superior court, for which purpose it must be filed by the clerk. When so entered the submission cannot be revoked except by mutual consent. If the submission is not made an order of the court, it may be revoked at any time before the award. The arbitrators have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths, and to make an award. All the arbitrators must meet and act together, but when met a majority governs. They must be duly sworn to perform their duty. Their award must be in writing, and when the submission is made by an order of the court, must be filed by the clerk who ente s the same, after the expiration of five days, in the judgment book, and thereupon it has the effect of a judgment. The award may be vacated for fraud, misconduct, or excess of power on the part of the arbitrators, and under certain circumstances the court may modify the award.

Arrest. In an action for the recovery of money upon a contract, express or implied, when the defendant is about to depart from the State with the intent to defraud his creditors, he may be arrested; also in an action for a fine or penalty, or for money or other property embezzled or fraudulently misapplied by a public officer, officer of a corporation, or an attorney, factor, broker, agent, or clerk in the course of his employment, or by any person in a fiduciary capacity; also in cases of misconduct, neglect in office, or any professional employment, or willful violation of duties; also in actions to recover the possession of personal property where it has been concealed or removed or disposed of to prevent its being found; also in cases where the defendant has been guilty of a fraud in contracting the debt or obligation for which action is brought; or in concealing

or disposing of property; also when he has removed or disposed of his property or is about to do so with intent to defraud creditors. The order of arrest is made by the judge of the court when it appears that a cause exists therefor, by affidavit of plaintiff or some other person. The judge must require a written undertaking, with sufficient sureties in a sum not less than $500, to the effect that plaintiff will pay all costs and damages if the arrest be wrongful. Persons may be arrested also in proceedings as for contempt to enforce civil remedies. Administrators, executors, and guardians of the estates of minors may be required to give a strict account of property or money in their hands, held by them in that capacity, and in case of refusal may be arrested and imprisoned, where property or money has been embezzled or fraudulently converted by them.

Assignments for the Benefit of Creditors. The Civil Code and the Code of Civil Procedure contain provisions providing for assignments for the benefit of creditors, and for insolvency proceedings. Employes have a preferred claim for a limited amount of their wages or salaries. Assignments for the benefit of creditors must be made to the sheriff of the county where the insolvent resides, or, if a non-resident, where he has property. At any time, or from time to time, after the expiration of thirty days from the first publication of notice to creditors, the assignee may, at his discretion, declare and pay dividends to all creditors whose claims have been presented and allowed.

Attachments may be issued at the time of issuing the summons, or at any time thereafter. All property not exempt from execution may be attached in an action upon a contract, express or implied, for the direct payment of money, where the contract is made or payable in this State, and is not secured by any mortgage or lien upon real or personal property; or if originally secured, the security becomes valueless without any act of plaintiff. Also in an action upon a contract, express or implied, against a non-resident. The attachment is issued upon filing an undertaking, in a sum not to exceed the amount of the claim and not less than $200, to pay all damages in case no judgment is obtained, or the issuance of the attachment was wrongful. There must be an affidavit by or on behalf of the plaintiff, showing the amount defendant is indebted to plaintiff over and above all legal setoffs and counterclaims, and that the contract is one upon which attachment can issue, and that there is no security held, or if held it has become worthless without fault of the plaintiff, and that the attachment is not sought or action prosecuted to hinder, delay, or defraud any creditor of defendant. This showing must be made before an attachment can issue. The attachment may be discharged by the defendant by executing an undertaking, with sureties, to the effect that in case plaintiff recovers judgment, the property attached will be redelivered to the sheriff, or that the plaintiff will pay the value of the property released.

Bank Commissioners. No corporation can use the money or transact the business of a savings bank, or bank, or banking corporation, without first procuring from the bank commissioners a license until the first day of July next thereafter. It is the duty of the bank commissioners to personally make a full examination at least once in each year of each bank, or similar institution, for the purpose of ascertaining its condition and solvency; and if they find that such institution is violating its charter or is conducting business in an unsafe manner, they should communicate with the attorney-general, who shall immediately commence suit to enjoin and prohibit it from transacting any further business. The commissioners must examine, under oath, any of the officers, agents or servants of the corporation relative to its affairs and condition, and whoever shall neglect or refuse shall be deemed guilty of a misdemeanor. Any bank or banking corporation, including banks in liquidation or insolvency, shall, whenever required by the board of bank commissioners, make a report in writing to the commissioners, verified by the oath of its president and secretary or cashier, or its two principal officers. Said report shall show the actual financial condition of the corporation. The affairs of every bank or banking corporation which is hereafter forced into liquidation under the provisions of this act, or otherwise goes into liquidation, shall be closed and the business thereof settled within four years from the time it shall enter liquidation, unless at the expiration of such time it shall obtain a written consent from the majority of the board of bank commissioners. Private banks are included in the terms "banks or banking corporations," and they must report in like manner to the bank commissioners. For liabilities of stockholders, see *Corporations*.

Banks. The business of banking may be carried on by any corporation, organized for that purpose, under the general laws of the State, or by any individual or copartnership, except it be a special copartnership. A banker has a lien dependent upon possession of all property in his hands belonging to a customer for the balance due to him from such customer in the course of the business. There is no limitation upon the right to maintain an action for the recovery of money or other property deposited with any bank, banker, trust company, or savings and loan society.

Banks, Savings. Savings banks can only invest their funds in United States bonds, those of the State of California and those of the counties, cities or towns of California, unless they have the capital stock paid in, or a reserved fund of not less than $300,000, but they may loan money on adequate real or personal property for any period less than six years. The surviving husband or wife of any deceased person, or the next of kin of such decedent, may, without procuring letters of administration, collect of any savings bank any sum which said deceased may have left on deposit in such bank, provided the said deposit shall not exceed the sum of $300.

Bills and Notes. *Negotiable Instruments.* A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer. It must be made payable in money only, and without any condition not certain of fulfillment. The person to whom it is made payable must be ascertainable at the time the instrument is made; it may give the payee an option between the payment of the sum specified and the performance of any other act, but as to the latter the instrument is not within the provisions of this title. It may be with or without date, and with or without the designation of the time or place of payment. It may contain a pledge of collateral security, with authority to dispose thereof. A negotiable instrument must not contain any other contract than as above specified. Bills of exchange, promissory notes, bank notes, checks, bonds, and certificates of deposit are negotiable instruments. Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future; and the instrument is not invalidated by his death or incapacity at the time of the nominal date. Days of grace are not allowed. Acceptances must be in writing by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill with or without other words. The acceptance of a bill of exchange by a separate instrument binds the acceptor to one who, upon the faith thereof, has the bill for value or other good consideration. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance. An unconditional promise in writing to accept a bill of exchange is a sufficient acceptance thereof in favor of every person who, upon the faith thereof, has taken the bill for value or other good consideration. The protest of a notary, under his hand and official seal, is *prima facie* evidence of the facts contained therein. A bill of exchange, if accepted with the consent of the owner by a person other than the drawee, or an acceptor for honor, becomes, in effect, the promissory note of such person, and all prior parties thereto are exonerated. If a promissory note, payable on demand or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentation is excused.

Bills of Lading. A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading of the same tenor. A bill of lading is an instrument in writing signed by a carrier, or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. Bills of lading are negotiable, and all the title to the freight which the first holder had when he received it passes to every subsequent indorsee thereof in good faith, and for value in the ordinary course of business with a like effect and in like manner as in the case of a bill of exchange. When a bill of lading is made to "bearer," the simple transfer thereof by delivery conveys the same title as an indorsement. A carrier is exonerated from liability by delivery of the freight in good faith to any holder of a bill of lading therefor, properly indorsed or made in favor of the bearer. When a carrier has given a bill of lading he may require a surrender or a reasonable indemnity against claims thereon before delivering the freight.

Chattel Mortgages may be made upon the following personal property, and none other: Locomotives, engines, and other rolling stock of a railroad; steamboat machinery; the machinery used by machinists, foundrymen, and mechanics; steam engines and boilers; mining machinery; printing presses and material; professional libraries; instruments of surveyors, physicians, or dentists; upholstery, furniture, and household goods; oil paintings, pictures, and works of art; all growing crops, including grapes and fruit; vessels of more than five tons burden; instruments, negatives, furniture and fixtures of a photograph gallery; the machinery, casks, pipes, tubes, and utensils used in the manufacture or storage of wine, fruit-brandy, fruit-syrups, or sugar; also wines, fruit-brandy, fruit-syrup, or sugar, with the cooperage in which the same are contained; pianos and organs; iron and steel safes; neat cattle, horses, mules, swine, sheep, and goats, and the increase thereof; harvesters, threshing outfits, hay presses, wagons, and farming implements; the equipments of a livery stable, including buggies, carriages, harness, and robes; abstract systems, books, maps, papers, and slips of searchers of records; raisins and dried fruits, cured or in process of being cured; also all boxes, fruit graders, drying-trays, and fruit ladders.

Claims Against Estate of Deceased Persons. Immediately upon the appointment of an executor or administrator he must publish in some newspaper of the county—if there be one, if not then in some newspaper designated by the court—a notice to the creditors of the decedent, requiring all persons having claims against the estate to exhibit them, with the necessary vouchers, to the executor or administrator at the place of his residence or business, to be specified in the notice. Such notice must be published as often as the court shall direct, but not less than once a week for four weeks. The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of $10,000, and four months when it does not. All claims arising upon contracts, whether the same be due or not due or contingent, must be presented within the time specified in the notice, and any claim not so presented is barred forever, provided that when it is made to appear by the affidavit of the claimant to the satisfaction of the court that the claimant had no notice as provided, by reason of being out of the State, it may be presented at any time before a decree of distribution is entered. Every claim must be supported by affidavit, showing that the amount is justly due and that no payments have been made which are not credited, and that there are no offsets to the same, but if the claim be not due when presented, or be contingent, the particulars of such claim must be stated. The executor or administrator may, in addition to the affidavit, require satisfactory vouchers or proofs to be produced in support of the claim. Every claim properly presented for allowance must be indorsed by the executor or administrator, showing his allowance or rejection. If allowed it must be presented to the judge of the superior court for his approval, and he must indorse upon it his allowance or rejection. Every claim so allowed and approved, or a copy thereof, must, within thirty days thereafter, be filed with the court and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. When, however, a claim is rejected, either by the executor or administrator or the judge, the holder must bring suit in the appropriate court thereon, within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred. Judgment rendered against the decedent in his lifetime, or after his decree, on verdict prior to his decease, must be presented as in any other claim. No claim can be allowed which is barred by the statute of limitations. Claims against the estate are paid in the following order: 1. Funeral expenses. 2. The expense of last sickness. 3. Debts having preference by the laws of the United States. 4. Judgments rendered against the decedent in his lifetime and mortgages in the order of their date. 5. All other demands against the estate.

Collaterals are governed by the law relating to pledges of personal property. A pledge is a deposit of personal property by way of security for the performance of any act. Delivery of the thing pledged is essential to the validity of the bailment. Where the debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of the property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due. When the performance of the act for which the pledge is given is due in whole or in part, the pledge may collect what is due to him by the sale of the property pledged. But before the property can be sold the pledgee must demand performance thereof from the debtor, if he can be found, and must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend, but notice of the sale may be waived by the pledgor at any time. The sale must be by public auction and must be for the highest obtainable price. After the sale the pledgee may deduct from the proceeds the amount due and the necessary expenses of sale and collection, and must pay the surplus to the pledgor. The pledgee, or a pledge-holder, may purchase the property pledged when the same is sold at public auction. A pledgee can not sell any evidence of debt (collateral) pledged to him, except the obligations of governments, states, or corporations; but he may collect the same when due. In all cases, instead of selling property pledged, the pledgee may foreclose the right of redemption by a judicial sale under the direction of a competent court, and in that case may be authorized by the court to purchase at the sale.

Contracts. No estate in land will pass other than leases not to exceed one year, unless in writing. An agreement not to be performed within a year from making it must be in writing; also a promise to answer for the debt, default, or miscarriage of another; also agreements made in consideration of marriage other than a mutual promise to marry. An agreement for the sale of goods and chattels or things in action at a price not less than $200, unless the buyer accept and receive part of the same, or any part of the purchase money. No evidence is admissible to charge a person upon representations as to the credit of another unless the representations be in writing.

Conveyances. An estate in real property, other than an estate at will, or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized in writing. A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the face of the grant that a lesser estate was intended. A grant of real property may be made in the following form: "I, A. B., grant to C. D. all that real property situated in (insert name of county) county, State of California, bounded (or described) as follows: (Here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as for instance: 'The Norris Ranch.') Witness my hand this (insert) day of (insert month), 18—. A. B." The use of the word "grant" implies the following covenants: 1. That previous to the time of the conveyance the grantor had not conveyed the same estate, or any right, title, or interest therein to any person other than the grantee. 2. That such estate is at the time of the execution of the conveyance free from incumbrances, done, made, or suffered by the grantor. Subsequently acquired title passes by operation of law to the grantee, or his successors. Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated. Every conveyance of real property, acknowledged or proved and certified and recorded as prescribed by law, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees, and every conveyance of real property other than a lease for a term not exceeding one year is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Corporations. Private corporations may be formed by the voluntary association of any five or more persons, in the manner prescribed by statute. A majority of such persons must be residents of this State. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. Before the secretary of State issues to any railroad, wagon-road, or telegraph corporation, a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and 10 per cent. thereof actually paid to a treasurer for the benefit of the corporation. Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of State, and the affidavit above mentioned where such affidavit is required, the secretary of State must issue to the corporation over the great seal of the State a certificate that a copy of the articles containing the required statement of facts has been filed in his office, and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate by the name stated in the certificate, and for a term of fifty years, unless it is in the articles of incorporation otherwise stated, or in the code otherwise specially provided. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of State, must be received in all the courts, and other places as prima facie evidence of the facts therein stated.

Liability of Stockholders. Each stockholder of a corporation is individually and personally liable for such proportion of its debt and liabilities as the amount of stock or shares owned by him beare to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders for the proportion of this claim, payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation incurred while he was such stockholder, he is relieved from any further personal liabilities for such debt; and if an action has been brought against him for such debt, it shall be dismissed as to him upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred, and such liability is not released by any subsequent transfer of stock. The term "stockholder," as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another, and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock, until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the case above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liabilities. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liabilities as by this section may be brought against one or more stockholders, and simi ar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other State or Territory of the United States, or of any foreign country, and doing business within this State, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this State.

Costs. In all ordinary actions, costs are allowed, as of course, to the prevailing party, and in actions to foreclose liens, including mortgages, and in actions for divorce, and special proceedings, attorneys' fees are also allowed to the prevailing party. Non-resident plaintiffs may, by order of the court, be required to give a security for costs. Costs may be awarded in an equity proceeding, to either party, or may be divided between the parties, at the discretion of the court.

Courts. *Terms and Jurisdiction. Justices' courts* have civil jurisdiction: 1. In actions arising on contracts for the recovery of money, only if the sum claimed, exclusive of interest, does not amount to $300, and the jurisdiction of a justice of the peace in all cases where money judgment is recoverable is limited to $300. 2. In actions for damages for injury to the person, or for taking, detaining, or injuring personal property, or for injury to real property, where no issue is raised by the verified answer of the defendant involving the title to or possession of the same, if the damages claimed do not amount to $300 3. In actions to recover the possession of personal property, if the value of such property does not amount to $300. 4. In actions for a fine, penalty, or forfeiture not amounting to $300 given by statute, or the ordinance of an incorporated city or town, where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine. 5. In actions upon bonds or undertakings conditioned for the payment of money, if the sum claimed does not amount to $300, though the penalty may exceed that sum. 6. To take and enter judgment for the recovery of money on the confession of a defendant, when the amount confessed, exclusive of interest, does not amount to $300. 7. Also concurrent jurisdiction with the superior courts, within their respective townships. In actions of forcible entry and detainer, where the rental value of the property entered upon or unlawfully detained does not exceed $25 per month, and the whole amount of damages claimed does not exceed $200. Also in actions to enforce and foreclose liens on personal property, where neither the amount of the liens nor the value of the property amounts to $300.

Superior Court. The jurisdiction of the superior court is of two kinds: 1. Original. 2. Appellate. The superior court has original jurisdiction in all cases in equity; in all civil actions in which the subject of litigation is not capable of pecuniary estimation; in all cases at law which involve the title or possession of real property, or the legality of any tax, etc., and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to $300; of actions of forcible entry and detainer, of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annullment of marriage; and of all such special cases and proceedings as are not otherwise provided for. They also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

Supreme Court. Has original and appellate jurisdiction. In the exercise of original jurisdiction it shall have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus; it shall also have power to issue all other writs necessary and proper for the complete exercise of its appellate jurisdiction. There are no terms of court, in the strict sense, in this State. The courts of this State are presumed to be always open for the transaction of business. The supreme court holds six sessions annually. At Sacramento, in May and November; at San Francisco, in January and July; at Los Angeles, in April and October.

Days of Grace. Days of grace are not allowed.

Depositions. The deposition of a witness out of this State may be taken upon a commission issued from the court under the seal of the court, upon an order of the court, or a judge or justice thereof, on the application of either party, upon five days' previous notice to the other. If the court be a justice's court, the commission shall have attached to it a certificate under seal by the county clerk of said county to the effect that the person issuing the same was an acting justice of the peace at the date of the commission. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or if they do not agree, to any judge or justice of the peace or commissioner selected by the court, or judge, or justice issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties. The testimony of a witness out of the State may be taken by deposition in an action, at any time after the service of the summons or the appearance of the defendant; in a special proceeding, at any time after a question of fact has arisen therein. Depositions must be taken in the form of question and answer, and the words of the witness must be written down unless the parties agree to a different mode.

Depositions in this State. The testimony of the witness in this State may be taken by deposition in an action at any time after the service of summons or the appearance of defendant, and in a special proceeding after a question of fact has arisen therein, in certain enumerated cases.

Depositions for Use out of the State. Any party to an action or special proceeding in a court or before a judge of a sister State, may obtain the testimony of a witness residing in this State, to be used in such action or proceeding, in the cases mentioned following: If a commission to take such testimony has been issued from the court, or a judge thereof, befo e which such action or proceeding is pending, on producing the commission to a judge of the superior court with an affidavit satisfactory to him of the materiality of the testimony, he may issue a subpœna to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place. If a commission has not been issued and it appear to a judge of the superior court, or a justice of the peace, by affidavit satisfactory to him: 1. That the testimony of the witness is material to either party. 2. That a commission to take testimony of such witness has not been issued. 3. That according to the law of the State where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such judge or justice, will be received in the action or proceeding, he must issue a subpœna requiring the witness to appear and testify before him at a specified time and place. Upon the appearance of the witness, the judge or justice must cause his testimony to be taken in writing, and must certify and transmit the same to the court or judge before whom the action or proceeding is pending, in such manner as the law of that State requires.

Descent and Distribution of Property. Property, both real and personal, of an intestate passes to his heirs. A surviving wife succeeds to one-half of the community property, i. e., all property acquired by husband or wife during the marriage, which does not include property acquired by either husband or wife by gift, bequest, devise or descent, which is separate property. Dower interest does not exist. The separate estate is distributed as follows: If the decedent leaves a surviving husband or wife and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child or issue of such child. If a surviving husband or wife and more than one child, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to the children and to the lawful issue of any deceased child by right of representation. But if there be no child living, the remainder goes to all the lineal

descendants, and if they are in the same degree of kindred to the decedent they share equally, otherwise by right of representation. If the decedent leaves no surviving husband or wife, the whole estate goes to the issue—the issue of children taking by right of representation. If there is no issue the estate goes one-half to the surviving husband or wife and the other half to the father and mother in equal shares, or, if one be dead, to the survivor; if there be no father or mother, then their one-half goes in equal shares to the brothers and sisters or to their representatives. If there is no issue, or husband or wife, the estate goes to the father and mother, or the survivor, or, if both be dead, then in equal shares to the brothers and sisters, and to the children of any deceased brother or sister by right of representation. If the decedent leave a surviving husband or wife, and neither issue, father, mother, brother, nor sister, the whole estate goes to the surviving husband or wife. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin in equal degree. These are the principal provisions of the law of succession. Tenancy by the courtesy is not known to our law. If the person dies testate, all property passes as directed by the will.

Distress for Rent is not known, but judgment for rent and damages for unlawful detainer may be had, and property not exempt from execution may be levied upon to satisfy the judgment.

Divorce. A vinculo matrimonii may be decreed by the superior court for adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, or conviction of felony. A marriage may be annulled: 1. If the party seeking the annullment was under the age of legal consent, and the marriage was contracted without the consent of parents or guardian. 2. If the former husband or wife of either party was living and such marriage was in force. 3. If either party was of unsound mind. 4. If the consent of either party was obtained by fraud. 5. If consent was obtained by force. 6. If either party was physically incapable of entering the marriage state. The marriage of a divorced party is void, unless one year has elapsed since the divorce was rendered and made.

Dower. (*See Husband and Wife.*)

Evidence. The testimony of witnesses is taken in three modes: 1. By affidavits. 2. By deposition. 3. By oral examination. The written words control when an instrument consists partly of written words and partly of printed form. (*See also Depositions.*)

Executions may issue immediately upon the entry of judgment. No right of stay exists except by order of the court in its discretion. There is no right of redemption of personal property. An execution may be issued at any time within five years after the entry of the judgment, and after the lapse of five years the judgment may be enforced or carried into execution by leave of court upon motion, or by judgment for that purpose, founded upon supplemental proceedings. Execution may issue against the property of a judgment debtor after his death, if the judgment be for recovery of real or personal property, or the enforcement of liens thereon.

Exemptions. The following property is exempt from execution: 1. Chairs, tables, desks, and books, to the value of $200. 2. Necessary household, table and kitchen furniture belonging to the judgment debtor, including one sewing machine, stoves, stove-pipes and furniture, wearing apparel, beds, bedding and bedstead, hanging pictures, oil paintings and drawings drawn or painted by any member of the family, and family portraits, and their necessary frames, provisions actually provided for individual or family use sufficient for three months, and three cows and their sucking calves, four hogs with their sucking pigs, and food for such cows and hogs for one month; one piano, one shotgun, and one rifle. 3. The farming utensils or implements of husbandry not exceeding in value the sum of $1,000; also two oxen or two horses, or two mules, and their harness; one cart or wagon, and food for such oxen, horses, or mules for one month; also all seed, grain, or vegetables, actually provided, reserved or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of $200, and seventy-five bee hives, and one horse and vehicle belonging to any person who is maimed or crippled, and the same is necessary in his business. 4. The tools or implements of a mechanic or artisan necessary to carry on his trade; the notarial seal, records, and office furniture of a notary public; the instruments and chest of a surgeon, physician, surveyor, or dentist, necessary to the exercise of their profession, with their professional libraries and necessary office furniture; the professional libraries of attorneys, judges, ministers of the gospel, editors, school-teachers and music-teachers and their necessary office furniture; also the musical instruments of music-teachers actually used by them in giving instructions; and all the indexes, abstracts, books, papers, maps, and office furniture of a searcher of records necessary to be used in his profession; also the typewriters or other mechanical contrivances employed for writing in type actually used by the owner thereof for making his living; also one bicycle when the same is used by its owner for the purpose of carrying on his regular business, or when the same is used for the purpose of transporting the owner to and from his place of business. 5. The cabin or dwelling of a miner not exceeding in value the sum of $500; also his sluices, pipes, hose, windlass, derrick, cars, pumps, tools, implements, and appliances necessary for carrying on any mining operations, not exceeding in value the aggregate sum of $500; and two horses, mules, or oxen, with their harness, and food for same for one month, when necessary to be used in any whim, windlass, derrick, car, pump, or hoisting gear, and also his mining claim, actually worked by him, not exceeding in value the sum of $1,000. 6. Two horses, two oxen, or two mules, and their harness, and one cart or wagon, one dray or truck, one coupe, one hack or carriage for one or two horses, by the use of which a cartman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living, and one horse with vehicle and harness, or other equipments used by a physician, surgeon, constable, or minister of the gospel in the legitimate practice of his profession or business, with food for such oxen, horses, or mules for one month. 7. One fishing boat and net, not exceeding the total value $500, the property of any fisherman by the lawful use of which he earns a livelihood. 8. Poultry, not exceeding in value $25. Seamen's and seagoing fishermen's wages and earnings not exceeding $100. 9. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment, where it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family residing in this State, supported in whole or in part by his labor; but where debts are incurred by any such person, or his wife or family for the common necessaries of life, or have been incurred at a time when the debtor had no family residing in this State, supported in whole or in part by his labor, the one-half of such earnings above mentioned are nevertheless subject to execution, garnishment, or attachment to satisfy debts so incurred. 10. The shares held by a member of a homestead association duly incorporated, not exceeding in value $1,000, if the person holding the shares is not the owner of a homestead under the laws of this State. All the nautical instruments and wearing apparel of any master, officer, or seaman of any steamer or other vessel. 11. All moneys, benefits, privileges, or immunities accruing, or in any manner growing out of any life insurance on the life of the debtor, if the annual premiums paid do not exceed $500. 12. All fire engines, hook and ladders, with carts, trucks, carriages, hose, buckets, implements, and apparatus thereunto appertaining; and all furniture and uniforms of any fire company or department organized under any law of this State. 13. All arms, uniforms, and accoutrements required by law to be kept by any person, and also one gun to be selected by the debtor. 14. All court houses, jails, and town, county, and State buildings; all public buildings, grounds, places, etc.; all material purchased for use in the construction, alteration, etc., of any building, mining claim, etc.; all machinery, tools, and implements necessary in and for boring, sinking, putting down, and constructing surface or artesian wells; also the engines necessary for operating such machinery, implements, tools, etc.; also all trucks necessary for the transportation of such machinery, tools, implements, engines, etc., to the value of $1,000. No article, however, or species of property mentioned in this section, is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon.

Fraud. (*For Fraudulent Debtors, see Arrest.*) Any contract obtained through fraud is voidable. Consent is deemed to have been obtained through fraud only when it would not have been given had such cause not existed. Actual fraud consists in the suggestion as a fact of that which is not true, the positive assertion of that which is not true in a manner not warranted by the information of the person making it, the suppression of that which is true by one having knowledge of it, and promises made without any intention of performing, or any other act fitted to deceive. Constructive fraud consists of any breach of duty, which without an actual fraudulent intent, gains an advantage of the person in fault by misleading another to his prejudice. Actual fraud is always a question of fact.

Garnishment. Upon receiving instruction in writing from the plaintiff or his attorney that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant or is owing any debt to the defendant, the sheriff must serve upon such person a copy of the writ and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ. All persons having any such property at the time of serving of such writ, unless it is delivered up or transferred or paid to the sheriff, shall be liable to the amount of such credits, property, or debts, until the attachment be discharged, or any judgment by him recovered be satisfied. The garnishee may be cited to appear before the court or judge and be examined on oath respecting such property.

Holidays are every Sunday, the 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July, the 1st Monday of September, the 9th day of September, the 25th day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States or by the governor for a public fast, thanksgiving, or holiday. If the 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July, the 9th day of September, or the 25th day of December, fall upon a Sunday, the Monday following is a holiday.

Homestead. The homestead consists of the dwelling house in which the claimant resides, and the land on which the same is situated. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or with the consent of the wife from her separate property. When the claimant is not married, but is the head of a family, the homestead may be selected from any of his or her property. The homestead can not be selected from the separate property of the wife without her consent, shown by her making or joining in making the declaration of homestead. The homestead is exempt from execution or forced sale, except in satisfaction of judgments obtained: 1. Before the declaration of homestead was filed for record, and which constitutes liens upon the premises. 2. On debts secured by mechanics', contractors', sub-contractors, artisans', architects', builders', laborers' of every class, materialmen's or vendors' liens upon the premises. 3. On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife or by an unmarried claimant. 4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record. The homestead of a married person can not be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife. Homesteads may be selected and claimed: 1. If not exceeding $5,000 in value, by any head of a family. 2. If not exceeding $1,000 in value, by another person.

Husband and Wife. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto. In other respects their interests are separate. Neither husband or wife has any interest in the property of the other, and either may enter into any engagement with the other, or with any other person, respecting property which either might if unmarried. All property of either, owned by him or her before marriage, and that acquired afterward by gift, bequest, devise or descent, is the separate property of such person. All other property acquired after marriage by either husband or wife or both, is community property; but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property. The husband has the management and control of the community property, with absolute power of disposal other than testamentary, provided that he cannot make a gift of the same or convey the same without valuable consideration, unless the wife consents in writing. The community property is not liable for the contracts of the wife made after marriage, unless secured by a pledge or mortgage thereof. The separate property of the husband is not liable for the debts of the wife contracted before marriage, and the separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage.

Interest. Unless there is a contract fixing a different rate, interest is payable on all moneys at the rate of 7 per cent per annum after they become due on an instrument in writing, and on moneys due or lent on any settlement of accounts from the day on which the balance is ascertained. A judgment bears 7 per cent per annum after rendition. Parties may agree in writing upon any rate of interest, and may agree that if the interest is not punctually paid that it shall become a part of the principal and bear the same rate.

Judgments (*see Actions*) are liens upon real estate of the judgment debtors for five years, situated in the county where the judgment is entered, or two years in the county where a transcript of the original docket, certified by the clerk, may be filed with the recorder. A judgment is not a lien upon personal property, but such property may be seized by execution thereon. A judgment may be revived, but it is barred by the statute of limitations within five years, unless revived by leave of court upon motion. It may also be revived by an action upon the judgment.

Liens. Mechanics, material-men, contractors, sub-contractors, artisans, architects, and laborers of every class performing labor upon or furnishing material to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, aqueduct, tunnel, fence, machinery, railroad, wagon road, or other structure, have liens upon the property upon which they have worked or furnished material, and any person performing labor in a mining claim has a lien upon the same, and the works owned and used by the owners for reducing the ores from such mining claim, for the work or labor done. In case of a contract for the work between the owner and his contractor, the owner of the property can not be charged with any greater liability for the liens than may be owing by him to the original contractor under the terms of the contract. Whenever the contract price exceeds $1,000 in amount, it must be in writing, subscribed by the parties, and filed in the office of the county recorder before the work is commenced; otherwise it is void and the property of the owner is liable to a lien for the value of all the labor done and materials furnished. Of this contract price, at least 25 per cent must be made payable not less than thirty-five days after the final completion of the work or contract. The liens that may be claimed rank in the following order, viz: 1, laborers; 2, material-men; 3, sub-contractors; 4, contractors; and must be satisfied out of the proceeds of the sale in the same order. The lien-holders in each class share pro rata if the proceeds are insufficient for that class. A claim of lien must be filed in the office of the county recorder within sixty days after notice of the completion of the structure, if by the original contractor, or if by a sub-contractor or material-man, within thirty days. Suit must be brought in the superior court within ninety days after filing the claim of lien. An attorney's fee for foreclosing is allowed by the court, and made part of the costs of suit. [C. C. P. 1183–1187.] Bailors, etc., have the usual common law liens upon personal property, dependent upon possession. *(See Chattel Mortgages and Deeds of Trust, Mortgages, Judgments, Executions.)*

Limitations. If real estate is held adversely for five years, such adverse possession ripens into title, except against infants and persons under disability. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows: Within five years: (1) An action upon a judgment or decree of any court of the United States, or of any State within the United States. (2) An action for mesne profits of real property. Within four years: An action upon any contract, obligation or liability founded upon an instrument in writing, executed in this State. Within three years: (1) An action upon a liability created by statute, other than a penalty or forfeiture. (2) An action for trespass upon real property. (3) An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property. (4) An action for relief on the ground of fraud or mistake; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting fraud or mistake. Within two years: (1) An action upon a contract, obligation or liability not founded upon an instrument of writing, or founded upon an instrument of writing executed out of the State. (2) An action against a sheriff, coroner, or constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution; but this subdivision does not apply to an action for an escape. (3) An action to recover damages for the death of one caused by the wrongful act or neglect of another. Within one year: (1) An action upon a statute for a penalty or forfeiture, when the action is given to an individual or to an individual and the State, except when the statute imposing it prescribes a different limitation. (2) An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the people of this State. (3) An action for libel, slander, assault, battery, false imprisonment, or seduction. (4) An action against a sheriff, or other officer, for the escape of a prisoner arrested or imprisoned on civil process. (5) An action against a municipal corporation for damages or injuries to property caused by a mob or riot. Within six months: (1) An action to recover property seized by tax collector. (2) To recover corporation stock sold for delinquent assessment. To actions brought to recover money or other property deposited with any bank, banker, trust company, or savings and loan society, there is no limitation. If when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State; and if, after the cause of action accrues, he departs from the State, the time of his absence is not part of the time limited for the commencement of the action. And if the person entitled to bring the action, be at the time the action accrued, either a minor, insane, imprisoned for a term less than life, or a married woman, and her husband is a necessary party with her in commencing such action, the time of such disability is not a part of the time limited for the commencement of the action. No acknowledgment or promise is sufficient to take a case out of the operation of the statute of limitations, unless the same is in writing, signed by the party to be charged. Part payment will not take the case out of the statute of limitations. Where a cause of action has arisen in another State, and would be barred by the statute of limitations of that State, an action cannot be maintained here.

Married Women. A married woman may become a sole trader by the judgment of the superior court of the county in which she has resided for six months next preceding the application. The husband of the sole trader is not liable for any debts contracted by her in the course of her sole trader's business unless contracted upon his written consent. A married woman may convey without consent of her husband, and is not liable for the debts of her husband, but is liable for her own debts contracted before or after her marriage. She may contract as a *femme sole* so as to bind her separate property. The wife may make a will of her separate property. The earnings of the wife are not liable for the debts of her husband. If the husband fail to make provision for the support of the wife, a person furnishing her with necessary articles for her support may recover the value from the husband. Married women may hold and transfer stock in corporations without the consent of her husband. A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or incumbrance of her real or personal estate, which shall have the same effect as if she were unmarried, and may be acknowledged in the same manner as a grant of real property. A grant or conveyance of real property made by a married woman may be made, executed, and acknowledged in the same manner and to the same effect as if she were unmarried.

Mechanics' Liens. *(See Liens.)*

Mortgages. Any interest in real property which is capable of being transferred may be mortgaged. A mortgage can be created, renewed, or extended only by writing executed with the formalities required in the case of a grant of real property. Every transfer of an interest in real property, other than in trust made only as the security for the performance of any act, is to be deemed a mortgage, and the fact that the transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against the subsequent purchaser or encumbrancer for value and without notice) although the fact does not appear by the terms of the instrument. A mortgage is a lien upon everything that passes by a grant of the property. A mortgage does not entitle the mortgagee to the possession of the property. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect. The assignment of a debt secured by a mortgage carries with it the security. When a mortgage is satisfied or the mortgage indebtedness paid, the mortgagee must satisfy the mortgage of record under penalty. A mortgagee may foreclose the right of redemption of the mortgagor.

Notes and Bills of Exchange. *(See Bills and Notes.)*

Partnerships. *(See Special or Limited Partnerships.)* Partnerships may be formed for the transaction of any lawful business by two or more persons, and the partnership property, also the property of members of the firm, is liable for all debts contracted by the firm in their business.

Pledge. *(See Collaterals.)*

Powers of Attorney. An attorney in fact may be appointed for any purpose for which an agency can lawfully be created. Powers of attorney can only be conferred by an instrument in writing subscribed by the principal which must particularly specify the powers conferred. If the instrument contains a power to convey or execute instruments affecting real property, it must be duly acknowledged and must be recorded in the county within which the real property to be conveyed or affected is situate. No such instrument which has been so recorded is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified, and recorded in the same office in which the instrument containing the power was recorded. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

State of..... } ss.
County of.... }

On this ..... day of ....., in the year ....., before me (here insert the name and quality of the officer), personally appeared ....., known to me (or proved to me on the oath of .....) to be the person whose name is subscribed to the within instrument as the attorney in fact of ....., and acknowledged that he subscribed the name of ..... thereto as principal, and his own name as attorney in fact.

Probate Law. *(See Administration of Estates, Claims against Estates of deceased persons, Descent and Distribution.)* The superior court has jurisdiction of proceedings in probate, and such proceedings must be instituted (1) In the county of which the decedent was a resident; (2) in the county of which he may have died leaving estate therein, he not being a resident of the State; (3) in the county in which any part of the estate may be, if the decedent died out of the State and was not a resident. Letters testamentary or of administration, may be revoked for misconduct or disobedience of the order of the court. Special administrators may be appointed pending the appointment of a regular administrator or executor when there is a delay of granting letters or a vacancy. An inventory and appraisement is required of the executor or administrator within three months. Upon the return of the inventory the court may set apart for use of the surviving husband or wife, or of the minor children, all the property exempt from execution including any homestead selected, providing the same was selected from the common property or from the separate property of the person selecting or joining in the selection of the same. If none has been selected, the court must select, designate and set apart and cause to be recorded a homestead for the use of the surviving husband or wife, or of the minor children, or if there be no surviving husband or wife, then for the use of the minor children out of the common property, or if there be no common property, then out of the real estate belonging to the decedent. Property so set apart is not subject to further administration. If upon the return of the inventory it appears that the value of the whole estate does not exceed $1,500, the court may set apart the whole of the estate for the use and support of the family of the deceased. The provisions of law relating to new trials and appeals, also apply to probate proceedings.

Protest. *(See Bills and Notes.)*

Redemption. The right of redemption exists in cases of sale of real estate upon execution. The defendant may redeem within one year by payment of the amount of the judgment and interest at 1 per cent per month. Any other redemptioner may redeem within sixty days after the last redemption, and so on, by paying the amount of the previous redemption with 2 per cent addition thereon, together with any assessment or taxes which the last redemptioner may have paid, with interest on the same.

Replevin. The plaintiff in an action to recover the possession of personal property, may at the time of issuing the summons, or at any time before answer, claim the delivery of such property. An affidavit must be made by the plaintiff or by some one in his behalf showing that the plaintiff is the owner of the property, or entitled to its possession, that the property is wrongfully detained by the defendant, the alleged cause of detention thereof, and that it has not been taken for a tax, assessment or fine, or seized under an execution or attachment, or if so seized that it is exempt; also the actual value of the property. Plaintiff must also give a bond in double the value of the property. The defendant may give to the sheriff a written undertaking in double the value of the property, and retain the same, but in case he fails so to do the property is delivered to the plaintiff. The judgment in such action is in the alternative for a return of the property or for its value in case a delivery can not be had.

Rescission. A party to a contract may rescind the same in the following cases only. (1) If his consent was obtained by a mistake, duress, menace, fraud or undue influence. (2) If through the fault of the party as to whom he rescinds, the consideration fails. (3) If such consideration becomes entirely void from any cause. (4) If such consideration, before it is rendered to him, fails in a material respect. (5) By consent of all the parties. The party rescinding must do so promptly upon discovering the facts which entitle him to rescind, and must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same upon condition that such party shall do likewise.

Special or Limited Partnerships. May be formed by two or more persons for the transaction of any business, except banking or insurance. It may consist of one or more persons called general partners, and one or more called special partners. A certificate must be signed showing nature of business, which are general and which are special partners, and the amount of capital stock each has contributed. The certificate must be acknowledged as in case of deed; must be filed

in clerk's office and recorded in county recorder's office. An affidavit must be filed in same office with original certificate, stating the sum contributed. The certificate must be published in a newspaper once a week for four weeks. The general partners are liable as such. The contribution of the special partner is liable, but not otherwise, unless he has willfully committed some act in violence of the provisions named or interfered with the business of the firm, in which cases and some others, he may be held as a general partner.

Statute of Frauds. A will must be in writing, except a nuncupative will. (*See Wills.*) No estate in land will pass other than leases not to exceed one year, unless in writing. An agreement not to be performed within a year from making it must be in writing; also a promise to answer for the debt, defraud, or miscarriage of another; also agreements made in consideration of marriage, other than a mutual promise to marry. An agreement for the sale of goods and chattels or things in action at a price not less than $200, unless the buyer accept and receive part of the same, or any part of the purchase money. No evidence is admissible to charge a person upon representations as to the credit of another, unless the representations be in writing.

Summons. (*See Actions.*)

Supplementary Proceedings. When an execution is returned unsatisfied, the judgment creditor can obtain an order requiring the judgment debtor to appear and answer concerning his property before the judge or referee appointed by him; also, in case after the issuing of an execution, upon proof by affidavit that the judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, the judge may make the order, and instead thereof, if it appear that the debtor is about to abscond, he may, by order of the judge, be arrested and required by him to give security for the judgment, or that he will attend from time to time during the pendency of the proceedings, and that he will not in the meantime dispose of any portion of his property, and in default of security he may be committed to prison.

Taxes. On the last Monday of November of each year taxes become delinquent, except the last installment of the real property taxes, and thereafter 15 per cent is added for delinquency; provided, that if they be not paid before the last Monday in April next succeeding, 5 per cent is added for delinquency. On the last Monday of April of each year all the unpaid portion of the remaining one-half of the taxes on all real property is delinquent, and thereafter 5 per cent is added for delinquency; provided, that in counties containing a population of over 250,000 inhabitants, on the last Monday in November of each year all of the unpaid portion of the personal property taxes, and the unpaid portion of one-half the taxes on all real property, are delinquent, and thereafter 5 per cent is added for delinquency; provided, that if they be not paid before the last Monday in February next succeeding, 5 per cent is added for delinquency. On the last Monday of each year, all the unpaid portion of the remaining one-half of the taxes on all real property is delinquent, and thereafter 5 per cent is added for delinquency; and provided further, that the entire tax on any real property may be paid at the time the first installment as above provided is due and payable; and provided further, that the taxes on all personal property, unsecured by real property, shall be due and payable immediately after the assessment of said personal property is made.

Transfer of Corporation Stock. Whenever capital stock of a corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by indorsement by the signature of the proprietor, or his attorney or legal representative, and delivery of the certificate, but such transfer is not valid, except between the parties, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer. Shares of stock may be held, owned, or transferred by a married woman as a femme sole. When the stock is owned by a non-resident, the officers of the corporation may require of the person presenting the same for transfer satisfactory evidence that the owner was alive at the date of the purported transfer, or in lieu thereof an indemnity bond, and may decline to record the transfer until such requirement is complied with.

Trust Deeds may be used instead of mortgages, but are not often used except with some savings and loan banks or societies.

Wills. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal. A married woman may dispose of all her separate estate by will without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. Every will other than a nuncupative will must be in writing, and every will other than an olographic will and a nuncupative will, must be executed and attested as follows: 1. It must be subscribed at the end thereof by the testator himself, or some person in his presence, and by his direction must subscribe his name thereto. 2. The subscription must be made in the presence of the attesting witnesses, or acknowledged by the testator to them to have been made by him or by his authority. 3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and. 4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request, and in his presence and in the presence of each other. An holographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed. A witness to a will should always write his name and residence. All devises or gifts to a subscribing witness are void unless there are two other competent subscribing witnesses. No will made out of this State is valid as a will in this State, unless executed according to the provisions of the code.

SYNOPSIS OF THE LAWS OF COLORADO

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. ROGERS, CUTHBERT & ELLIS, Attorneys at Law, Denver. (*See Card in Attorneys' List.*)

Acknowledgments. When executed within this State; before any judge of any court of record, before the clerk of any such court of record, or the deputy of any such clerk, under the seal of such court; before the clerk and recorder of any county, or his deputy, under the seal of such county; before any notary public, under his notarial seal; or before any justice of the peace within his county; provided, that if such deed, bond, or agreement be for the conveyance of lands situate beyond the county of such justice of the peace, there shall be affixed to his certificate a certificate of the county clerk and recorder of the proper county, under his hand and seal of said county, to the official capacity of such justice of the peace, and that the signature is the true signature of such justice. When executed out of this State and within the United States, before the secretary of any such State or Territory, under the seal of such State or Territory; before the clerk of any court of record of such State or Territory or of the United States within such State or Territory, having a seal, under the seal of such court; before any notary public of such State or Territory, under his notarial seal; before any commissioner of deeds for any such foreign State or Territory appointed under the laws of this State, under his hand and official seal; before any other officer authorized by the laws of any such State or Territory to take and certify such acknowledgment; provided, there shall be affixed to the certificate of such officer, other than those above enumerated, a certificate by the clerk of some court of record of the county, city, or district wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be; that he has the authority, by the laws of such State or Territory, to take and certify such acknowledgment, and that the signature is the true signature of such officer. When executed out of the United States, before any court of record of any foreign Republic, Kingdom, Empire, State, Principality, or Province having a seal, the acknowledgment being certified by the judge or justice of such court to have been made before such court, and attested by the seal of such court; before the mayor or other chief officer of any city or town, having a seal, certified under such seal; before any consul or consuls of the United States within such foreign country, under the seal of his consulate. Witnesses and seals are unnecessary. Where a homestead is mortgaged or conveyed wife must acknowledge the instrument apart from her husband.

Actions. The distinction between actions at law and suits in equity is abolished. All actions must be prosecuted by the party in interest. Suit is begun by filing a complaint or issuing summons. Summons may be issued by the clerk of the court, or by plaintiff's attorney. Where defendant is a non-resident, service of summons may be made by publication where the proceeding is one in rem.

Administration of Estates. All demands not exhibited in one year are barred, unless such creditor can find other estate of the deceased not inventoried, saving, however, to femmes covert, persons of unsound minds, imprisoned or beyond the seas, the term of one year after their disability has been removed to exhibit their claims. Creditors having liens on the property of the decedent can not foreclose for one year unless permitted by the court and in no event until the claim has been allowed.

Agent. Any person doing business as manager, trustee, etc., or under the words "and company," or otherwise than under the personal names of all the constituent members associated, is required to file with the clerk and recorder of the county, in which such business is carried on, an affidavit setting forth the full christian and surnames and addresses of all the parties represented; and further affidavit is required upon any change or changes by withdrawal, addition, or otherwise. Persons so in default are guilty of a misdemeanor and are barred from prosecuting any suit for the collection of their debts. This does not apply to corporations whose articles are duly recorded.

Aliens. No restrictions as to aliens.

Arbitration. Differences may be submitted to arbitration by consent of the parties in the form prescribed by statute, and a judgment may be entered by the clerk of the district court upon the finding of the arbitrators.

Arrest. Imprisonment for debt, except in cases where one refuses to deliver up his estate for the benefit of his creditors, or in cases of tort or where there is a strong presumption of fraud, is abolished. In cases of debt founded upon tort, execution may issue against the body of the defendant, but not where the defendant shall have been convicted in a criminal proceeding for the same wrong. Imprisonment shall not exceed one year, and the prisoner is released upon payment of the debt. The writ of ne exeat is granted under proper circumstances. (*See Fraudulent Purchasers.*)

Assignments. An assignment to be valid must be for the benefit of all creditors without preference. The deed must be recorded where assignor resides, or if a non-resident where his principal business is carried on. The consent of creditors is presumed. Assignor must within four days render to the assignee an inventory of his assets, and a list of creditors with their residences and post-office addresses, and the amount of their respective claims. Assignee, within six days from the date of filing the deed, must file with the clerk of the court an inventory and valuation of the property of assignor under oath, and give bonds in double the amount of the inventory or valuation. Where real estate is assigned, assignee must file notice with the clerk and recorder of each county where the same is situated. This shall be constructive notice. Notice of assignment must be published. Assignee must send to each creditor a statement of the aggregate assets and liabilities, and notice to present his claim within three months. Claims filed within three months have priority over those filed thereafter, unless creditor can show he did not receive notice. At the end of three months, assignee shall file a full list of all creditors who have filed their claims, their residences, the amounts claimed, and amount and value of security held. Also a statement of all his proceedings. Any person interested may appear and file exceptions to any claim. Notice must be given to creditor, and he must file his reply within the time allowed to answer in a civil action. The court shall designate a time for hearing on the exception. If no exception be filed, or if the claim be allowed, the court shall enter judgment in favor of the creditor against assignor, and order assignee to make dividends in proportion to the claims of the creditors. Assignee is an officer of court and any interference with him or bringing suit against him without permission of the court is deemed contempt. The assignor is subject to order of court and may be compelled to file reports of all conveyances of real estate and sales of personal property not in the usual course of business and such sales shall not

be valid until approved by the judge. The court may remove assignee and appoint another if he neglects to file bond and inventory, or upon petition of the majority in number and value of creditors unless it appear that such removal will not be for the best interest of the estate. Assignee has all the powers of assignor necessary to execute the trust, and right to sue for all property belonging to the estate. Assignee must file additional inventory for all additional property coming into his hands. The court may compel the appearance of a debtor or other witnesses. They may compel the debtor to deliver to the assignee any property embraced in the assignment. No assignment shall be invalid because of any misappropriation of property by the debtor, but assignee may recover such property; but debtor, until assignment, may convey and mortgage property in good faith. Majority of the number and value of creditors may, in writing, appoint an attorney to represent the estate and the court may allow him reasonable compensation. The assignor, creditors, and assignee may agree in writing to waive proceedings before the court and make such arrangements as may seem proper to them. Before assignee shall be discharged he shall file report and send written notice to all creditors at least ten days before hearing. Assignee must close his trust within one year unless the court extend the time. Valid claims of servants and employees of the assignor for wages earned during six months next preceding the date of the assignment not exceeding $50 unpaid and held by the person who earned the same and all taxes assessed under the laws of the State or of the United States are preferred claims. Any creditor may maintain action on bond of assignee for damages sustained by reason of his misfeasance. No mortgage or deed of trust or security shall be foreclosed within one year after the making of such assignment except under order of court and shall not be foreclosed otherwise than by suit in court before it has first been approved and allowed. And when such claim shall be approved, the court may order foreclosure within one year. The lien shall not be impaired by the suspension of the remedy.

Discharge of Debtor. Every person who shall hereafter make a general assignment, or shall have an assignment still pending, may be discharged from his debts upon compliance with this act. Such assignor desiring a discharge shall after three months and within one year after filing his assignment, or if the deed be filed prior to the passage of this act, then within one year after the passage of this act, file with the clerk of the court his application for such discharge, in which he shall state the name and address of the assignee and creditors and the amounts of their respective claims, together with an inventory of all his property. Such assignee shall annex an affidavit stating that the statements in the inventory are true, and that at no time during the insolvency has he disposed of property for the benefit of himself and family in defraud of his creditors, and has never created or acknowledged a debt for more than honestly due, nor fraudulently contracted any debt now due and not secured, and has not paid, secured, or compounded with any of his creditors with the view of fraudulently obtaining the discharge, and has not used any portion of his property within two months prior to the date in giving preference to any creditors. The court shall thereupon make and order requiring creditors to show cause why such assignor should not be discharged, fixing the day for hearing and to require a copy to be published for at least four weeks prior to the hearing, and that a copy be sent within five days to each of the creditors whose address is given and who have filed their claims. The application shall be regarded as a complaint, and any creditor may file at least ten days prior to the hearing his answer, duly verified, setting forth the ground of his objection to such discharge, which answer must controvert one or more material allegations of the affidavit. Allegations not controverted are taken as true. All issues so formed shall be tried together, and upon demand of the assignor or creditor, the case shall be tried by jury, otherwise by the court. The verdict is to be recorded as in other cases, and costs taxed against the unsuccessful party. When the jury can not agree the merits are to be tried by the court. The assignor may be examined on oath at the instance of the creditor, and such creditor may contradict or impeach him. Every creditor residing without the State who shall make proofs of his claim, or shall accept any dividend, or shall in any way participate in the proceedings, shall be deemed a party to such proceedings for the discharge of the assignor. The order discharging the assignor from his debts shall be final and binding upon all such resident creditors and all creditors residing without the State, subject to right of appeal. If it shall appear upon hearing that assignor has in all respects complied with the law, the court shall grant him a discharge from all debts prior to the making of such assignment, but such assignor will not be discharged from a debt shown to be fraudulently contracted. Or if a creditor has a lien, such creditor may enforce his lien. Where the assignor has given a preference in violation of this act without any intention to defraud his creditors, he shall be entitled to his discharge, if, within three months from the date of such finding, he causes such property to be conveyed to the assignee or pays to the assignee the amount of such indebtedness. The assignor, however, may pay necessary household expenses. The assignor shall not be discharged from any debt created in consequence of any defalcation as a public officer, or in a fiduciary capacity, nor for any debt of any person who has paid such fiduciary debt. Upon granting such discharge judgment shall be entered against the debtor in favor of such of his creditors as have appeared for the sum allowed and also a discharge thereof upon the docket. In any subsequent action brought against the assignor, such discharge may be pleaded as a bar to a recovery for indebtedness or liability found due in such proceedings and included in such judgment. Appeals may be taken by such assignor or by any creditor from such judgment within the time and in the same manner as appeals in ordinary civil actions; provided the appeal bond shall be conditioned to pay the cost of the appeal only. An appeal by some creditors shall not suspend the discharge from the debt of creditors not appealing. Discharge of any debtor shall not affect the liability of any surety, indorser, guarantor, joint-maker, or obligor of such assignor, or any other person liable for the same indebtedness. Property acquired or liability incurred subsequent to the petition for discharge are not affected. The County Court has concurrent jurisdiction with the District Court in matters of assignment, where the amount involved does not exceed $2,000, and no appeals are allowed to the District Court. Whenever such proceedings are pending in the County Court, and it shall be found the amount involved exceeds the sum of $2,000, the entire proceedings shall be transferred to the District Court. The provisions of the code apply to all proceedings under this act, except as otherwise provided. (In effect August 4, 1891.)

Attachments. In actions on contracts, the plaintiff may have the defendant's property attached, upon filing a bond with sufficient sureties in a sum not less than double the amount sued for; also an affidavit made by the plaintiff, his agent, or attorney, setting forth the amount and nature of the debt claimed, and one or more of the following grounds of attachment: 1. Non-residence of defendant. 2. That defendant is a foreign corporation. 3. That defendant is a corporation whose chief office or place of business is out of this State. 4. That defendant is evading service of process or has been absent from State for four months, during all which time the debt has been overdue. 5. That defendant is about to remove his property, or a material part thereof, out of this State. 6. That defendant has fraudulently conveyed or transferred, or assigned his property. 7. That defendant has fraudulently concealed, or removed or disposed of his property. 8. That defendant is about to fraudulently convey or transfer, or assign his property. 9. That defendant is about to fraudulently conceal or remove, or dispose of his property, or has departed or is about to depart from this State, with the intention of having his effects removed from this State. 10. That defendant has failed or refused to pay the price or value of any article delivered to him, which he should have paid for upon delivery. 11. That defendant has failed or refused to pay the price or value of any work or labor performed, or for any service rendered by the plaintiff, at the instance of the defendant, and which should have been paid at the completion of such work or services. 12. That the defendant fraudulently contracted the debt, or by any fraudulent conduct, procured money or property of the plaintiff. Garnishee process will issue in aid of attachment when property of the debtor is found in the possession of third persons. After an attachment suit has been commenced, other creditors, upon filing complaint, affidavit, and bond before judgment in first suit, may be made co-plaintiffs with first attaching creditor and prorate in the attached property. If sufficient property is attached to render the debtor insolvent, other creditors whose debts are not due may have an attachment and share in the proceeds. A dismissal of the suit of first attaching creditor does not affect subsequent attachments. Where it appears necessary by affidavit filed, the writ may be executed on Sunday. In all cases of attachment any person other than the defendant, claiming any of the property attached or any interest therein, may intervene without giving bond, but the property shall not thereby be released.

Banks, Savings. Savings banks shall have a capital of not less than $25,000, which shall be paid in cash. The board of directors or trustees may invest one-half of the deposits made with them upon personal security or in bonds or stock of this State or of the United States, or in the bonds of any county, State, or school district of this State, legally authorized to issue such bonds, or loan the sum upon bonds secured by mortgage upon unincumbered real estate worth at least double the amount loaned.

Banks, State. Any number of persons, not less than three, may establish a bank of discount and deposit; the capital stock must not be less than $30,000; 50 per cent to be paid in before the opening of the bank, and a certificate to that effect under the oath of the president and cashier, to be filed in the office of the secretary of State, and in the office of the recorder of deeds in the county where such bank is located; and no bank to continue to transact business beyond the period of one year unless the capital stock shall have been fully paid up in cash and a like certificate filed as before stated. Shareholders in banks, savings banks, trust deposit and security associations shall be held individually responsible for debts, contracts, and engagements of said association in double the amount of the par value of the stock owned by them respectively. Any banker, bank officer, or employe who receives money or property after he shall have had knowledge of the insolvency of said bank, shall be deemed guilty of larceny, and, on conviction, punished by imprisonment in the penitentiary for not less than one year nor more than ten years, and in addition shall be individually responsible for the property received. Loans to any individual or corporation are limited to 25 per cent of the paid-up stock of the bank. Loans to an officer or director of the bank are limited to 90 per cent of the stock held by such officer or director.

Bills of Lading and Promissory Notes. (*See Commercial Paper.*)

Chattel Mortgages are good for two years where sum secured does not exceed $2,500; for five years, when sum does not exceed $20,000, and not exceeding ten years where sum secured exceeds $20,000; but if the sum secured be greater than $2,500 mortgagee must annually record statement stating that the mortgage secures a bona fide indebtedness, the portion which has been paid, and the amount still due. Mortgages of merchandise invalid unless possession delivered to mortgagee. Disposing of mortgaged property is larceny. Chattel mortgagee, his agent or attorney, now allowed thirty days after maturity of debt in which to take possession of mortgaged chattels, and during said thirty days, or until possession is taken by mortgagee, his agent or attorney, the mortgagor shall have the right to pay said debt and have mortgage discharged as if debt had been paid at maturity.

Collaterals. Persons holding stocks in corporations as collateral security not personally liable as a stockholder for corporate debts. A pledgee of stock may nevertheless represent same at corporate meetings.

Commercial Paper. To be negotiable, an instrument must contain an unconditional order or promise to pay to bearer, or order, a certain sum of money on demand, or at a fixed or determinable time. The sum payable may be in a particular kind of current money; with interest; with exchange; by stated installments; with provision that upon default of payment of any instrument or of interest, the whole shall become due. The instrument may authorize in case of non-payment the sale of collateral securities, or confession of judgment, or waive benefit of any law intended for the advantage of the obligor. An instrument payable on contingency is not negotiable. The date expressed is *prima facie* the true date. One in possession of an incomplete instrument has *prima facie* authority to fill in the blanks, but authority must be strictly pursued. An incomplete instrument not delivered is not enforceable. Holder may treat an ambiguous instrument, either as a bill or a note. Where capacity of person signing is not clear he is deemed an indorser. A person adding to his signature words indicating that he signs on behalf of a principal, or in a representative capacity, is not liable if duly authorized; but mere words of description without disclosing his principal does not exempt him. A signature by "Procuration" gives notice that agent's authority is limited. Consideration is *prima facie* presumed. A pre-existing debt is a valuable consideration. A holder having a lien on the instrument is a holder for value to the extent of his lien. An accommodation party is liable to a holder for value with notice. Indorsement must be written on the instrument itself or upon a paper attached. It may be restrictive—prohibiting further negotiation, or vesting title for the use of another; qualified—amounting merely to an assignment, or conditional. Two or more payees, unless partners, must all indorse unless one has authority for all. An instrument payable to a person as cashier or other fiscal officer of a bank or corporation is deemed *prima facie* payable to the bank or corporation, and maybe indorsed by the corporation or by the officer. For one to be a holder in due course the instrument must be complete and regular, and taken in good faith for value before overdue, and without notice of any informity in the instrument or defect in title. To constitute notice of an informity or defect, the person must have had actual knowledge or knowledge of such facts that taking it amounted to bad faith. Holder is deemed *prima facie* holder in due course; but when the title of a person who has negotiated it is shown to be defective, the burden is upon the holder to prove himself a holder in due course. A drawer may insert an express stipulation negativing or limiting his liability. A qualified indorser warrants the genuineness of the instrument; that he has a good title, and that he has no knowledge of any invalidity. An unqualified indorser

warrants the instrument valid and subsisting. One indorsing an instrument before delivery is liable as indorser. Joint payees or indorsees who indorse are deemed to indorse jointly and severally. Except when excused, presentment for payment, or acceptance on the day when due is necessary to charge drawer or indorser of an instrument. Presentment must be made to all parties personally liable unless one has authority for all. Every negotiable instrument is payable at the time fixed *without grace*. When the day falls on Sunday or a holiday the instrument must be presented on the next succeeding business day. An instrument payable at a bank is equivalent to an order to the bank to pay the same for the account of the principal debtor. Except when excused, notice of non-acceptance or non-payment must be given to the drawer and to each indorser, or his agent, otherwise they are discharged. Notice may be given by holder or by anyone in his behalf, and may be in writing or oral, personal or through the mails, in any terms sufficient to apprise the parties. Notice must be given to all parties unless they are partners or one is authorized to accept for all. Notice must be given on the next business day after dishonor, or if parties reside in different places, mailed on such day. Waiver of protest is deemed a waiver of formal protest, presentment, and notice of dishonor. Protest is required only in case of dishonored bills appearing on their face to be foreign. It is optional in case of other negotiable instruments. Bills drawn and payable within this State are inland; others are foreign. Protest may be made by notary public or by any responsible resident of the place where the bill is dishonored, in the presence of two witnesses. Parties secondarily liable are discharged by extension of time of payment. Payment by a party secondarily liable, unless an accommodation party does not discharge the instrument, but he may again negotiate it. Renunciation of holder's rights against a party must be in writing, unless the instrument be delivered up. Material alteration voids an instrument, except as against those assenting; but holder in due course, not a party to the alteration, may enforce the instrument according to its origin *al tenor*. A bill does not operate as an assignment of funds, and drawee is not liable until he accepts. The drawee or indorser may insert the name of the person called referee in case of need, to whom holder will resort if he see fit. Acceptance must be in writing. If written on a paper other than a bill, whether before or after the bill is drawn, it does not bind acceptor except in favor of a person taking the bill for value on the faith thereof. A qualified acceptance discharges drawer and indorser unless they assent. Assent is presumed unless they dissent. Holder can refuse to receive a qualified acceptance. No presentment for payment is necessary after non-acceptance. A protested bill not overdue may be accepted supra-protest for honor of any party liable. Maturity is calculated from the date of noting non-acceptance, not from date of acceptance for honor. Bill protested for non-payment may be paid supra protest for the honor of any person liable, for one for whose account it was drawn. A note drawn to maker's order is not complete until indorsed by him. A check must be presented within a reasonable time or drawer will be discharged to the extent of the loss caused by the delay. The bank is not liable to the holder until it accepts or certifies the check. When not otherwise provided by this Act, the Law Merchant prevails. This Act applies only to instruments executed on or after July 20, 1897.

Contracts. The following must be in writing: Contracts for leasing of land for period longer than one year or for the sale of lands; every agreement which by its terms is not to be performed within one year; every special promise to answer for the debt, default or miscarriage of another; every agreement, promise, or undertaking made upon consideration of marriage, except mutual promise to marry, and every contract for the sale of any goods, chattels, or things in action, for the price of $50 or more. A creditor of joint debtors may release one or more of such debtors and such release shall operate as a full discharge of such debtor or debtors so released, but such release shall not release or discharge or affect the liability of the remaining debtor or debtors. Such release shall be taken and held to be a payment of the indebtedness of the full proportionate share of the debtor or debtors so released. In case one or more joint debtors are released, no one of the remaining debtors shall be liable for more than his proportionate share of the indebtedness unless he is the principal debtor and the debtor released is his surety; in which case such principal debtor or debtors shall be liable for the whole of the remainder of the indebtedness. Nothing herein shall affect or change the right of a surety who has paid his proportionate share of indebtedness from recovering the same from his principal debtor.

Conveyances. No joint tenancy unless expressly declared in the deed. Unless so declared grantees shall be deemed tenants in common. Lands not in possession may be conveyed. Not necessary for wife to join in deed except in a conveyance of or a mortgage of a homestead. Seals are unnecessary. Unacknowledged deeds are deemed notice from the date of filing but they can not be read in evidence unless subsequently acknowledged or proved. (*See Acknowledgments.*)

Corporations. Three or more persons may form a corporation by filing a certificate in the proper offices, stating the name, objects for which organized, amount of capital stock, number of shares, term of existence (not to exceed twenty years, except in particular cases), number of directors, and names of those to manage the corporation for the first year, the place where principal office is to be kept, and counties in which its business is to be carried on. They may sue and be sued the same as individuals, may borrow money and pledge their franchises and property to secure the same. But the directors of a mining or manufacturing corporation cannot encumber the mines or plant of such corporation until the question has been submitted to the stockholders and a majority vote of all the shares of stock has been made in favor of such proposition; and such mortgage or encumbrance without such consent is absolutely void. Articles of incorporation may be amended in any respect except as to the objects of incorporation. Directors shall be not less than three nor more than thirteen, and must be stockholders. Notice of annual meeting must be published for ten days in a newspaper published nearest the principal office of the company and also by delivering personally or depositing in the postoffice, at least thirty days before the meeting, a notice addressed to each stockholder. Shareholders may be represented by proxy, and in case a quorum is not present, annual meeting may be adjourned for a period not exceeding thirty days. Cumulative method of balloting for directors is permitted. The omission of annual meeting does not dissolve the corporation, but such annual meeting may be held at such time as the board of directors may direct. Stockholders are liable for corporate debts to the amount unpaid upon the stock. When the stock becomes fully paid up, a certificate to that effect should be filed in the office of the secretary of State, and in the county wherein the corporation is doing business. In case the stock is not fully paid up and a certificate filed, the directors are required annually, and within sixty days from January 1st, to file a report stating the amount of the capital stock, the proportion actually paid in, and the amount of existing debts. A failure to file such report makes all the directors or trustees of the company jointly and severally liable for all the debts of the company contracted during the year next preceding the time when such report should have been filed. No meetings of the board of directors can be held outside the State unless so provided by the articles of incorporation. Corporations may be dissolved by a two-thirds vote of the entire stock, but no dissolution will impair remedies against the corporation for liabilities previously incurred, nor will it take effect until all the corporate debts have been paid. Foreign corporations are not permitted to do business in this State until they have filed with the secretary of State a copy of their charter, and a copy of the incorporation act of the State under which they are organized. They must also designate by a certificate filed in the office of the secretary of State, an agent residing at the principal place of business of the company in this State, upon whom process can be served. Such foreign corporations are subject to all the liabilities and duties imposed upon domestic corporations. They can not effect a reconstruction by liquidation or otherwise, so as to effect a citizen of this State, unless all his rights and interests are protected. No foreign corporation can hold real estate except as provided by statute; can not mortgage, pledge, or otherwise encumber real or personal property to the injury of citizens of Colorado. Fee for filing Articles of Incorporation, whether foreign or domestic, is $10; and 15 cents on each thousand shares in excess of $50,000. A corporation under the laws of Colorado, not administered upon as an expired corporation or gone into liquidation or settled its affairs, may extend its charter by special meeting of the stockholders called by 10 per cent of the entire capital stock, and notice of such meeting, stating time, place, and purpose, published four consecutive weeks in a newspaper printed nearest its principal office, notice also to be mailed to each stockholder at least thirty days prior to the meeting; vote taken by ballot; if majority vote in favor of same, president and secretary, under seal of the company, shall certify the fact and file certificate in office of Recorder of Deeds in each county where the company does business and one in the office of the Secretary of State. Corporate life shall be renewed for entire term, not exceeding twenty years. Corporation shall pay to Secretary of State same fee now provided by law for filing corporation papers. Term of existence shall not be extended after the period of one year from and after the expiration of its corporate existence. Such extension shall not renew corporate franchises granted by municipalities. Provided that corporations still in active operation shall have the right to extend their corporate existence even though their charter has expired more than one year.

Courts. Justices of the peace have jurisdiction in matters involving less than $300, county courts in matters involving less than $2,000, except in the administration of estates. The district court is the court of general jurisdiction. The court of appeals has final jurisdiction in appealed cases involving less than $2,500 where the controversy does not involve a freehold or franchise, or the construction of a statute. The supreme court is the court of final appeal, and also has some original jurisdiction, as in cases of habeas corpus, mandamus and other remedial writs.

Days of Grace. (*See Commercial Paper.*)

Depositions. The deposition of a witness out of the State shall be taken upon commission issued by the clerk of the court where the suit is pending, on the application of either party, on five days' previous notice to the other, which notice shall be accompanied by a copy of the interrogatories to be attached to the commission. It may be issued to a person agreed upon by the parties or to any judge or justice of the peace, or to a commissioner appointed by the governor of the State to take affidavits and depositions in other States and Territories, or to a notary public. The adverse party may file and have attached to the commission such cross-interrogatories as he may desire. Parties may agree by written stipulation to take the deposition orally.

Descents and Distributions. The estate of an intestate descends, one-half to the surviving husband or wife, and the residue to the surviving children and descendants of children; if such intestate leave no child, nor descendants of any children, then the whole of the estate descends to such surviving husband or wife. Except as enumerated the estate of every intestate descends: 1. To his children surviving, and the descendants of his children who are dead. 2. If there be no children nor their descendants, then to his father; and if there be no father, then to his mother; and if there be no mother, then to the brothers and sisters, and to the descendants of the brothers and sisters who are dead, the descendants, collectively, taking the share of their immediate ancestors in equal parts. 3. If there be no children, nor their descendants, nor father, mother, brothers, sisters, nor descendants of deceased brothers or sisters, nor husband nor wife living, then to the grandfather, grandmother, uncles, aunts, and their descendants, the descendants taking collectively the share of their immediate ancestors in equal parts. 4. If none of the relatives above enumerated be living, then to the nearest lineal ancestor and their descendants, the descendants collectively taking the share of their immediate ancestors in equal parts.

Divorce. Causes for divorce are: 1. Impotency. 2. A husband or wife living. 3. Adultery. 4. Desertion for one year. 5. Cruelty. 6. Failure to support for one year. 7. Habitual drunkenness for one year. 8. Conviction of felony. Personal service of summons must be made if defendant within the State. Plaintiff must be present, and in case defendant defaults, the court appoints an attorney to defend the action. Except in cases of adultery or extreme cruelty, plaintiff must have been a bona fide resident of the State for one year.

Dower. Dower and courtesy are abolished.

Executions. Executions may be issued immediately where no appeal is taken, and when placed in the hands of an officer become a lien upon all personal property of the debtor not exempt, in the county to which it is issued, and it may be directed to the sheriff of any county in the State. Executions may issue upon judgments at any time within twenty years from the date of entry, but from and after ten years from the entry of judgment, it is considered satisfied unless revived as provided by law. Executions are returnable in ninety days in courts of record, and thirty days in justice's courts. Debtor or legal representative has six months to redeem land from sale under execution. Judgment creditor has nine months.

Exemptions. Homestead, consisting of house and lot or lots in any town or city, or of a farm of any number of acres, so that the value does not exceed $2,000, when such homestead has been entered of record as such, and is occupied by a householder the head of a family. Personal property exempt includes all wearing apparel of the debtor and his family, pictures, school books and library, beds and bedding, stoves, cooking utensils, and household furniture, not exceeding $100; provisions for six months, tools, implements, or stock in trade, up to $200; one cow and calf, ten sheep and necessary food for six months; working animals, up to $200; the library and implements of a professional man up to $300; one bicycle and one sewing machine. Persons not the heads of families are entitled to tools, working animals, and stock in trade, not exceeding $300 in value. When debtor is head of family, or wife head of a family, $60 due on account of wages are exempt, when such family are dependent upon such wages for support. All money received as a pension, whether pensioner is head of family or not. When debtor dies or absconds the money thus exempted is exempt to his wife or children.

Fraud. Any person or persons who shall be a party to any fraudulent conveyance or sale of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or who shall

conceal, secrete, remove, or dispose of any goods or chattels, or shall be a party to any bond, suit, judgment or execution, contract or conveyance had, made, or contrived with intent on the part of said parties, in either case, to deceive and defraud, or defeat, hinder, or delay the creditor or creditors, of such person or persons aforesaid in the collection of their just debts, damages, or demands, such person or persons shall, on conviction of either or all of said offenses, be punished by confining in the penitentiary for a term not exceeding three years.

Fraudulent Purchasers on Credit. One who purchases goods on credit under an assumed or fictitious name with intent to defraud the seller; or having purchased goods on credit shall, with intent to defraud the seller, sell, hypothecate, or otherwise dispose of them out of the usual course of business; or secrete himself, or abscond, shall be guilty of a misdemeanor.

Garnishment. (*See Attachments.*)

Holidays. The first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September (Labor Day), any day appointed by the governor or president as a day of thanksgiving, the twenty-fifth day of December, and Saturday afternoons during the months of June, July and August of each year are legal holidays. When holidays fall on Sunday, the Monday following shall be considered as the holiday. Notes maturing on Sunday or holidays are deemed payable on the day following.

Husband and Wife retain their separate property, real and personal, owned at marriage, or acquired thereafter by gift, and the rents, issues, profits, and proceeds thereof, and any real, personal or mixed property which shall come to them by descent, devise, or bequest, or the gift of any person, including presents from the husband — for their own separate use, and not liable for their husbands' debts. Wife may carry on trade or business, sue and be sued, contract debts, and execute promissory notes, bonds, bills of exchange, and other instruments precisely as if *sole*, and may convey real estate without the husband joining in the deed. A married woman may make a will, but can not bequeath more than half her property away from her husband without his consent in writing. The husband can not by will deprive his wife of over one-half of his property. In all marriages hereafter contracted, the husband shall be liable for the debts and the liabilities of the wife contracted before marriage, to the extent of the real and personal property he may receive with or through her, or derive from the sale or rent of her lands, and no further. The expenses of the family and the education of the children are chargeable from the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or severally.

Interest. The legal rate is 8 per cent and the same is allowed on overdue bonds, bills, promissory notes, judgments, county, town, and city warrants, and other like evidences or certificates of municipal indebtedness. There are no usury laws.

Judgments. A transcript of judgment may be filed in the office of the county clerk and recorder of any county in the State, and thereupon such judgment becomes a lien upon all real property owned by the judgment debtor in that county. The lien holds for six years from the entry of judgment. A judgment should be revived every ten years. (*See Executions.*)

Limitations. Actions of debt founded upon contract, express or implied; upon judgments of courts not courts of record; for arrears of rent; of assumpsit on a case founded on any contract; for waste and trespass on land and for replevin, must be begun within six years after the cause of action accrues. Actions against sheriffs and coroners, for liability incurred by them in their official capacity, shall be brought within one year after the cause of action accrues. Bills of relief on the ground of fraud must be filed within three years after the discovery of the fraud by the aggrieved party; in case of a trust not cognizable by the courts of common law within five years. In actions accruing out of the State upon contract, express or implied, or upon any sealed instrument in writing, or judgment or decree of any court, more than six years before the commencement of the action, the statute of limitations may be pleaded in bar of recovery. If a judgment has been rendered without this State more than three months before suit in this State, and is based on a cause of action more than six years old, such cause of action can be pleaded in bar of the judgment. Persons under the age of twenty-one years, married women, persons insane, imprisoned, or absent from the United States, may bring any of the foregoing actions within the time in this chapter respectively limited after the disability shall be removed. If any person entitled to bring any of the foregoing actions shall die before the expiration of the time limited therefor, and if the cause of action does by law survive, the action may be commenced by the executor or administrator of the deceased person at any time within one year after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter. Payment by one co-obligor will not take the case out of the statute as to the others.

Married Women. (*See Husband and Wife.*)

Mortgages. The old form of trust deed has been practically abolished. A public trustee is now appointed in each county, and where it is desired to use the old form of trust deed, the public trustee must be named as trustee. In case any person not the public trustee is named as trustee, the instrument is deemed a mortgage, and must be foreclosed the same as a mortgage. In case the public trustee is named, the property is sold by him as provided in the deed, after advertisement in a newspaper designated in the trust deed, and such advertisement shall not be less than four weeks. Upon a sale by the public trustee, a certificate of sale is issued. A subsequent incumbrancer may redeem by paying the amount bid, and the sum so paid shall be added to the amount of the subsequent incumbrance. The grantor in the trust deed, or his assigns may redeem from sale within six months. After six months, and within nine months, a judgment creditor may redeem. After the expiration of the period of redemption, the public trustee executes a deed to the property to the holder of the certificate of sale, which is assignable. Redemption from sales of mortgaged property the same as other sales under executions.

Notes and Bills of Exchange. (*See Commercial Papers.*)

Powers of Attorney. Powers of attorney for the conveyance of lands must be acknowledged in the same manner as deeds, and must be recorded in the same county wherein the real property to be conveyed is situate.

Protest. (*See Commercial Paper.*)

Replevin. A writ of replevin may issue in any suit to recover possession of personal property upon filing a bond in double the value of the property, together with an affidavit stating that plaintiff is the owner of the property in controversy or is lawfully entitled to the possession thereof; that it is wrongfully detained by the defendant; that the same has not been taken for a tax, assessment, or fine, or under execution, or attachment issued against the property of the plaintiff, or if seized, that it is exempt; and the real value of the property. At any time within forty-eight hours from the service of the writ, the defendant may have the property redelivered to him by executing a bond in double the value of the property, with two or more sureties. The sheriff acting under such writ, after publicly demanding the delivery of the property, may break open a building, if delivery is refused.

Taxes are a perpetual lien on real estate until paid. Taxes may be paid in two semi-annual installments; the first half on or before the last day of January, and the residue on or before the last day of July of the year following the one in which they are assessed. Real estate sold for taxes redeemed any time within three years. All mines and mining property of the class heretofore exempted by the constitution of the State shall be assessed and taxed, and the taxes levied and enforced by sale of the property taxed in default of payment, as is provided by law in the case of other classes of taxable real properties. Delinquent taxes carry interest at the rate of 24 per cent per annum for first six months, 18 per cent for the following six months, and 12 per cent thereafter.

Wills. Males of the age of twenty-one years, and females of the age of eighteen years, may dispose of their property by will, but personal property may be disposed of by will by any person of the age of seventeen years. Wills devising real estate shall be in writing signed by the testator or some one for him in his presence and at his direction, and attested in his presence by two or more credible witnesses. Personal property may be devised by a nuncupative will if made in the presence of two credible witnesses and by them reduced to writing within a reasonable time afterwards. Unless otherwise expressed in the will, an after-born child will share in the property. (*See Husband and Wife.*)

SYNOPSIS OF THE LAWS OF CONNECTICUT

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MESSRS. TYLER, INGERSOLL & MORAN, Attorneys at Law, New Haven. (*See Card in Attorneys' List.*)

Accounts. In all actions for a book debt, the entries of the parties in their respective books shall be admissible in evidence. (*For limitation of actions on accounts, see Limitation to Suits.*)

Acknowledgments. (*See Conveyances.*)

Actions. There is but one form of civil action. Mesne process in civil actions consists of a writ of summons or attachment, describing the parties, the court to which it is returnable, and the time and place of appearance, and embodies the plaintiff's complaint. All such writs shall be signed by a justice of the peace, commissioner of the superior court, or judge or clerk of the court to which it is returnable. The complaint should contain a concise statement of the facts constituting the cause of action and a demand for relief; and legal and equitable relief may be demanded in the same action, except in actions before justices of the peace, who have no equity jurisdiction. Process returnable to a justice of the peace must be served on the defendant at least six days before the return day. If returnable to the superior court, or court of common pleas, it must be served at least twelve days before the return day, except in actions returnable to the court of common pleas for New Haven County, service of which may be made six days inclusive before the return day if the defendant resides in the town of New Haven. Garnishees must be served at least twelve days before the return day in any court.

Administration of Estates. The probate court has jurisdiction of deceased estates. Administration on intestate estates is granted to the husband or wife, or next of kin or to both. On their refusal or incapacity, or upon objection by any creditor or heir to such appointment, then to any other person whom the court deems proper. Bonds, which must be furnished by the administrators or executors, are usually made double the estimated value of the personal property. Bonds of surety companies authorized to do business in the State may be accepted. Where the will waives the bond a nominal bond is required, usually in double the amount of the debts of the testator. Deceased estates may be settled as solvent or insolvent. Not less than six months are limited for the presentation of claims against deceased estates, whether solvent or insolvent. Such claims are presented to the administrator or executor if the estate is solvent, or to commissioners appointed by the probate court if the estate is insolvent. Suit must be brought within four months from the time of receiving written notice from the administrator or executor of a solvent estate of the disallowance of a claim. Twelve months is the usual time allowed for the settlement of deceased estates.

Affidavits. Civil actions do not ordinarily have to be supported by affidavits. Affidavits have little weight as evidence, and are rarely admitted as such except in ex parte matters, such as uncontested divorce cases, and the like, where they are sometimes received.

Aliens. Any alien resident of any of the United States, and any citizen of France, so long as France shall accord the same right to citizens of the United States, may purchase, hold, inherit, or transfer real estate in this State in as full a manner as native-born citizens. Real estate may be acquired and held by any non-resident alien for mining and quarrying purposes, but shall be forfeited if not used for such purposes for ten consecutive years.

Appeals. Appeals may be taken from the judgments of justices of the peace, except that no such appeal can be taken in actions of summary process. Appeals may be taken from city courts and the Waterbury district court to the superior court where the matter in demand is of sufficient amount. Appeals may be taken from the orders or decrees of the probate court to the superior court, also from the decision of the superior court, court of common pleas, Waterbury district court, or any city court, on questions of law, to the supreme court of errors.

Arbitration. When the parties to any action, pending in court, desire to refer it to arbitration, each may choose one arbitrator and the court may appoint a third, and the award of such arbitrators, returned to and accepted by the court, shall be final, and the judgment shall be rendered pursuant thereto, and execution granted thereon, with costs.

Arrest. The body is exempt in ordinary actions for debts, except for money received by one acting in a fiduciary capacity, or where there is fraud in contracting the debt or in concealing attachable property so that it may not be reached by civil process. In actions generally, no attachment shall be granted against the body unless each cause of action in the complaint be such that execution may be issued against the body of the defendant upon the judgment founded thereon. Debtors may be arrested in actions for fraud or torts, and can give bail to the officer

making the arrest for their appearance before the court to which the writ upon which the arrest is made is returnable. A debtor committed to jail on civil process can be released on taking poor debtors' oath. The debtor will not be released if his oath is overcome by rebutting evidence.

Assignments and Insolvency. Voluntary assignments in insolvency can be made by any debtor to a trustee of his own selection, subject to the substitution of another by the probate court, if deemed proper. Assigning debtor must lodge with court of probate, within five days after assignment, a list verified under oath of his creditors, with their residences and the amounts severally due them, and a schedule of his property. A creditor for over $100, having brought suit and finding no property to attach, may apply to the probate court for the appointment of a trustee in insolvency of the debtor's estate. Trustee takes all debtor's estate not exempt; and all incomplete levies or attachments on mesne process commenced within sixty days previous, are dissolved. Three to six months are allowed to prove claims. The debtor may receive an allowance for his support and that of his family; and if the estate pays 70 per cent of all claims proved, he obtains a full discharge, and his property is exempt for two years from all legal process as against any claim that might have been proved against his estate. Upon payment of 50 per cent the court, if requested by the debtor, may order the trustee to pay the debtor 25 per cent of the residue of such estate to be exempt from attachment, provided such payment does not exceed $1,000. All debts due any laborer or mechanic for personal wages for labor performed within three months next preceding the assignment are to be paid in full to the amount of $10), before the general liabilities of the debtor are paid.

Attachments. Attachment may be made upon the original process, and is served by attaching the goods or lands of the defendant, or, if sufficient goods be not found, the person in tort actions. Attachments may be granted upon all complaints containing a money demand. Supplemental attachment may be ordered by the court upon application at any time during the pendency of the action. If the plaintiff be a non-resident, he is required to furnish a bond for prosecution. An attachment lien expires unless execution is levied within sixty days after final judgment upon the attached personal property, or within four months upon the attached real estate.

Banks and Banking. Banks are organized only upon special enactment of the Legislature; they cannot be organized under the general joint-stock act. Every bank and trust company shall always keep in its banking office, gold and silver coin, bullion, bonds, legal tender notes of the United States, or National bank currency to an amount not less than one-tenth of all its liabilities, except its capital stock, but the bonds of the United States so included in its reserve fund shall never exceed one-twentieth of said liabilities. No trust company or banking corporation shall declare any dividend except from its net earnings, after deducting all losses, over drafts and obligations suspended or over due, nor make any loan or discount on a pledge of its own stock; nor establish any branch office or agency thereof, or employ any agent or person to make loans or discounts at any other place than the banking house. No bank or trust company shall give credit to any party who shall thereby become liable to it for more than 15 per cent of its capital stock actually paid in, together with the surplus, and every bank or trust company which shall violate the provisions of this section shall pay to the State not less than $1,000. No bank shall discount any paper made, accepted, or indorsed by its cashier, or any of its clerks, or by any partnership of which either is a member. When the loans and discounts of any bank to parties in this State shall in the aggregate amount to its capital stock, it may loan to parties out of this State any excess or surplus over the amount of its capital stock, and not otherwise. The stockholders of any bank, at the annual meeting, or at any special meeting which any five stockholders owning not less in all than one hundred shares of stock are authorized to call for that purpose, may examine the books, accounts, securities, and expenditures of the bank. No stock in any bank shall be voted on at any meeting of the stockholders which is not transferable, or which has been transferred, hypothecated, or pledged to any bank, or to any person in trust for any bank; and when the number of shares to be held by any party is limited, no stock held in trust for such party shall be voted on beyond what, with that standing in his name shall equal the amount so limited; and any person who shall vote upon any shares of stock in any bank in violation of this section, shall be disqualified from holding any office in such bank for one year thereafter. No person shall vote at any meeting of the stockholders of any bank as the attorney of another without a power of attorney; and when at any meeting the right of any person to vote on any stock is denied, he shall not be permitted to vote until he has lodged with the presiding officer of said meeting his affidavit, stating his interest in said stock, and also the character and amount of the interest, if any, owned by any other person therein. No person not a resident of this State shall act as a director of any bank in this State, and no director of any bank in this State shall act as a director in any other bank. No director in any bank shall be obligated to such bank to an amount exceeding 5 per cent of its capital actually paid in together with the surplus, and no bank shall permit its directors to become obligated to it to an amount at any one time exceeding in the whole the sum of 20 per cent on its capital stock actually paid in, together with the surplus. Any bank which shall violate the provisions of this section shall forfeit to this State not less than $500 nor more than $1,000. If any director of any bank shall receive any compen-sation for indorsing any paper discounted by such bank, he shall forfeit to the State the full amount of such paper. No bank shall declare any dividend except from its earnings remaining after deducting all losses, all sums due for expenses, all overdue and unsecured debts, and an allowance for depreciation of securities and investments; and the directors voting for any dividend not in conformity with the provisions of this section shall be subject jointly and severally to a fine of $500. Any reduction of capital stock must be reported to, and approved by the Legislature before the same become valid. Cashiers must give bonds with surities in the sum of not less than $10,000, and if any cashier neglects for the period of thirty days to give bond, his office becomes vacant. Cashiers must file quarterly statements, under oath, with the bank commissioners each year, showing the resources and liabilities of their banks, and also publish the same in a newspaper published in the county where the bank is located. Cashiers must publish the names of stockholders whose dividends remain unclaimed for one year. Stock of non-residents in National banking association is taxed 1½ per centum of its value, the duty of paying the tax being on the Cashier of the bank. Persons may do a general banking business, either as individuals or co-partners. The law does not impose any restraints nor assume any control in such cases. Most of the banking of the State is done by National banks, and their State charters, where they exist, and State regulations are suspended during the continuance of such banks under the National bank act. Savings banks may invest, not exceeding 20 per centum of their deposits and surplus, in notes secured by pledge of dividend-paying stocks or interest-bearing bonds as collateral security; not exceeding 25 per centum thereof, in notes secured by indorsement, guaranty, or joint and several obligation of two or more parties, residents of this State; and may invest also in the purchase of the authorized bonds of the United States; in the authorized bonds or interest-bearing obligations of any of the New England States, and in those of certain other specified States and municipal corporations.

Chattel Mortgages. (*See Mortgages and Conditional Sales.*)

Collateral Inheritance or Succession Tax. (*See Taxes.*)

Conditional Sales. All contracts for the sale of personal property, except household furniture, musical instruments, bicycles, and such property as is by law exempt from attachment and execution, conditioned that the title thereto shall remain in the vendor after delivery, must be in writing, describing the property and all conditions of sale, and acknowledged before proper authority, and recorded in town where vendee resides. If not made as required, they are held to be absolute sales, except as between the vendor and vendee or their personal representatives. A crime to conceal or convey personal property held on such conditional sale.

Conveyances. All conveyances of land must be in writing, signed, sealed, and acknowledged by the grantor, and attested by two subscribing witnesses. The word "seal" or the letters (L. S) may be used for a seal. The acknowledgment is made by the grantor before a judge of a court of record of this State or of the United States, a clerk of the superior court, court of common pleas, or district court, justice of the peace, commissioner of the school fund, commissioner of the superior court, notary public, town clerk, or assistant town clerk, if in this State, and if in any other State or Territory of the United States, then before a commissioner appointed by the governor of this State, or any officer authorized to take the acknowledgment of deeds in such State or Territory, and if in a foreign country, before any consul of the United States, or notary public, or justice of the peace in such foreign country. Conveyances of real estate situated in this State, executed and acknowledged in any other State or Territory, in conformity with the laws of such State or Territory, are valid. If the land conveyed belongs to the wife, the husband should join in the conveyance, if married before April 20, 1877. If the land conveyed belongs to the husband, the wife need not join in the conveyance. No separate examination of married women is required in taking her acknowledgment. Conveyances, including leases for more than one year, to be effectual against any other person than the grantor and his heirs must be recorded on the town records of the town in which the land lies.

Corporations. Joint stock corporations may be formed by any three or more persons, who shall associate by written articles which shall express their agreement to constitute a corporation, the name by which it shall be known, the purpose for which it is constituted, the town in this State in which it is to be located, the amount of its capital stock, and the number of shares each person is to take, which shares shall each be of the par value of $100, $50, or $25, as may be prescribed. The name of such a corporation must commence with "The" and end with "Company" or "Corporation," which name is not then in use by any existing corporation in this State. The business must not be either trust, insurance, buying and selling real estate, banking, or trading in bonds, notes, or other evidence of indebtedness, or trafficking in letters patent or patent rights. All the capital stock must be subscribed for by bona fide subscribers, and at least 20 per cent paid for in cash. May issue preferred stock of different classes of preferences. Provision is made for winding up the affairs of the corporation and for its dissolution by the superior court. Three or more persons may associate for any lawful purpose, where no capital stock is created, and when so associated and its articles of association duly attested have been lodged with the secretary of State and the town clerk, such association shall be a body politic and corporate, and may hold property, the annual income of which shall not exceed $5,000. The name of every private corporation must indicate that it is a corporation.

Courts. *Terms and Jurisdiction.* Superior court holds one term per year in each county for the trial of civil causes, and has jurisdiction in all law and equity cases exceeding $500, and exceeding $100 in those counties where there are no courts of common pleas. Court of common pleas in Hartford, Fairfield, New London and New Haven counties, has exclusive law and equity jurisdiction above $100 and below $500, and concurrent jurisdiction with the superior court above $500 and up to $1,000, and in Litchfield County has exclusive jurisdiction up to $1,000. Not less than four terms each year are held in each of the counties named, and there are city courts in many of the cities, and a district court at Waterbury, with limited civil jurisdiction. Probate courts have jurisdiction of the settlement of the estates of deceased, insolvent, and incompetent persons, and are established in a large number of probate districts—one for each district. Justices of the peace have civil jurisdiction up to $100.

Days of Grace. (*See Notes and Bills of Exchange.*)

Deeds. (*See Conveyances.*)

Depositions may be taken in a civil action by a judge or clerk of any court, justice of the peace, notary public, or commissioner of the superior court, when witness lives out of the State, or more than twenty miles from place of trial, is over sixty years of age and unable to attend the trial, is going to sea, or out of the State, or by age and infirmity is unable to travel to court, or is confined in jail. Reasonable notice must be given to adverse party. Deponents must be cautioned to speak the whole truth, and carefully examined. They must subscribe their depositions, and make oath before the authority taking the same. Depositions may be taken in any other State or country by a notary public, commissioner appointed by the governor of this State, or by any magistrate having power to administer oaths, and they may also be taken before a foreign minister, secretary of legation, consul, or vice-consul appointed by the United States, if taken out of the United States. A judge of the superior, common pleas, or district court can issue a "commission" to take the deposition of a person residing out of this State, to be used in a cause pending before such court. The superior court, upon petition, may allow depositions to be taken to perpetuate testimony concerning that which may thereafter be the subject of a suit. The person taking depositions may compel attendance of witnesses by subpœna and capias.

Descent and Distribution of Property. (As to the share of a surviving husband or wife, see the title *Husband and Wife.*) After the share of the surviving husband or wife, the residue of the real or personal estate is distributed in equal proportions among the children and the legal representatives of any of them who may be dead (children who have received estate by advancement of the intestate in his life-time being charged with the same in the distribution). Children born before marriage, whose parents afterward intermarry and recognize them as their own, shall be deemed legitimate and inherit equally with other children. If there be no children or legal representatives thereof, such residue shall be distributed equally to the brothers and sisters of the intestate of the whole blood, and those who legally represent them; and if there be no such kindred, then to the parent or parents; and if

none, then equally to the brothers and sisters of the half blood and those who legally represent them: and if none, then equally to the next of kin in equal degree, kindred of the whole blood to take in preference to kindred of the half blood, in equal degree, and no representatives to be admitted among collaterals after the representatives of brothers and sisters.

Divorce. Divorces are granted by the superior court exclusively, and for the following causes, viz.: Adultery, fraudulent contract, willful desertion for three years, with total neglect of duty; seven years' absence, during all which period the absent party has not been heard from; habitual intemperance; intolerable cruelty; sentence to imprisonment for life, or any infamous crime involving a violation of conjugal duty, and punishable by imprisonment in the State prison. Uncontested divorce cases cannot be heard until ninety days from the return day. The plaintiff must have continuously resided in the State three years next before date of the complaint, unless the cause arose subsequently to removal into this State, or unless defendant has resided in the State and has been personally served with the process, or unless the alleged cause is habitual intemperance or intolerable cruelty, and the plaintiff was domiciled in this State at the time of the marriage, and before bringing the complaint has returned to this State with the intention of permanently remaining. Custody of the children may be assigned by the court to either party, and alimony, not exceeding one-third the husband's estate, may be assigned to the wife, and the court has power to order alimony *pendente lite*, to be paid to the wife upon such terms and conditions as it may find advisable. Marriages void for any cause may be declared void and a nullity by the superior court.

Dower. (*See Husband and Wife.*)

Executions issue on final judgment, and are returnable within sixty days. No execution issued in an action founded on contract merely can be levied on the body of the debtor except for breach of promise of marriage, misconduct or neglect in office or professional employment, or breach of trust. Any judgment debtor, an execution against whom shall have been returned unsatisfied in whole or in part, may be examined on oath touching his property and means of paying such judgment, and may be committed for contempt.

Exemptions. Homestead, to the value of $1,000, if declaration to hold it as such is recorded. Of the property of any one person, his necessary apparel and bedding and household furniture necessary for supporting life; any pension moneys received from the United States while in the hands of the pensioner (which has been construed to cover also such pension money when deposited in a savings bank); implements of the debtor's trade, his library not exceeding $500 in value; sundry domestic animals not exceeding $150 in value; so much of any debt which has accrued by reason of the personal services of the debtor as shall not exceed $50, including wages due for the personal services of any minor child (but there shall be no exemption of any debt accrued by reason of the personal services of the defendant against the claim for the defendant's personal board); and all benefits allowed by any association of persons in this State toward the support of its members, incapacitated by sickness or infirmity, shall be exempted from foreign attachment or execution.

Foreign Attachments. Goods concealed in the hands of agents or debts due the defendant are reached by foreign attachment which takes the place of garnishment. No assignment of future earnings will prevent their attachment when earned unless made to secure a bona fide debt, due at the date of such assignment, the amount of which shall be stated therein as nearly as possible, nor unless the term for which they are assigned shall be definitely limited in the assignment, nor unless recorded before such attachment in the town clerk's office in the town where the assignor resides, or if he resides without the State, in the town where the employer resides, and a copy left with the employer. (See also *Exemptions.*)

Fraud. All fraudulent conveyances, suits, judgments, executions, or contracts, made or contrived with intent to avoid any debt or duty belonging to others, shall, notwithstanding any pretended consideration therefor, be void against those persons only, their heirs, executors, administrators, or assigns, to whom such debt or duty belongs.

Garnishment. (*See Foreign Attachments.*)

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. Wife married subsequent to April 20, 1877, may hold and convey real estate separate from her husband. Separate earnings of the wife are her sole property. On the death of the husband or wife, the survivor shall be entitled to the use for life of one-third in value of all the property, real or personal, owned by the other at the time of his or her decease, after the payment of all debts and charges allowed against the estate. The right to such third can not be defeated by will. Where there is no will the survivor shall take such third absolutely, and if there are no children, shall take all of the estate of the decedent absolutely to the extent of $2,000, and one-half absolutely of the remainder of said estate. Husband and wife married prior to April 20, 1877, may file acceptance of provisions of act of 1877. In marriages contracted prior to April 20, 1877, the husband must join wife in all conveyances of her estate. Dower exists only in real estate of which the husband was seized at his death. The wife is also entitled absolutely to one-third (or if the deceased left no children or legal representatives thereof, one-half) of the personal property of a deceased husband who dies intestate. The husband acquires a right to the use of all the land of his wife during her life, and if he has a child by her, and survives her, then during his own life as tenant by curtesy.

Interest. Legal rate, in absence of express agreement, 6 per cent; no more than 6 per cent can be recovered in either case after debt becomes payable; no usury laws.

Judgments carry 6 per cent interest, but are not liens, and execution may be had at any time during the life of both parties. Judgment by default may be obtained within the first three days of term to which suit is brought, unless debtor makes reasonable defense. Certificate of judgment may be recorded by judgment creditor or his assignee in town clerk's office, and such judgment from the time of filing such certificate shall constitute a lien upon the real estate described in such certificate, and if such lien be placed upon real estate attached in the suit upon which such judgment was predicated and within four months after such judgment was rendered, it shall hold from the date of such attachment. Such lien may be foreclosed or redeemed in the same manner as mortgages upon the same estate, and may also be foreclosed by decree of sale.

Liens. (Mechanics' Liens.) Mechanics' liens for labor or materials furnished in the construction or repair of any building may be filed by original contractor within sixty days after completion of work; but subcontractor must serve owner of building with notice of his intention to claim a lien within sixty days after he shall have commenced to furnish materials or render services. Mechanics' liens are forclosed same as real estate mortgages. Unless foreclosure is instituted, liens expire two years after filing. (*For Judgment Liens, see Judgments.*)

Limitations to Suits. Open accounts and contracts not under seal, six years; contracts under seal and promissory notes not negotiable, seventeen years; executory contracts, not in writing, to recover unliquidated damages, three years. Usual exceptions in favor of married women, minors, lunatics, and those imprisoned. The time during which the party against whom there may be such cause of action shall be without the State shall be excluded from the computation. Title to real estate by adverse possession may be gained in fifteen years.

Married Women. (*See Husband and Wife.*)

Mortgages of real estate are executed, acknowledged, and recorded in the same manner as deeds, and are foreclosed by strict foreclosure or by a decree of sale. The equity of redemption exists for a limited time fixed by the court (usually from two to six months). Chattel mortgages to be good against third parties, where the mortgagor retains possession, must be executed, acknowledged, and recorded as mortgages of land, and can only be made of the following described personal property—with or without the real estate in which the same is situated or used—namely: machinery, engines, or implements situated and used in any manufacturing or mechanical establishment; machinery, engines, implements, cases, types, cuts, or plates situated and used in any printing, publishing, or engraving establishment; household furniture in a dwelling house used by the owner therein in housekeeping; hay and tobacco in the leaf in any building. Piano, organ, melodeon, and any musical instrument used by an orchestra or band. Brick, burned or unburned, in any kiln or brick yard. Hotel keepers may mortgage the furniture, fixtures, and other personal chattels contained and used in the hotels occupied by them or employed in connection therewith. Chattel mortgages are foreclosed by sale under order of court.

Notes and Bills of Exchange. Promissory notes made payable to order or bearer for the payment of money only, are negotiable. The laws of this State make no distinction between commercial and negotiable paper, and do not require that negotiable notes be made payable at a bank or any fixed place in the State, unless so stipulated in the note. No days of grace on any paper dated on or after July 1, 1895, unless specified. A negotiable promissory note payable on demand is regarded as dishonored if unpaid four months after date, but where a note is payable at a stated time after demand, the four months do not begin to run until an actual demand has been made. Demand and reasonable notice are necessary to bind indorsers. Notes or bills falling due upon any holiday, to wit, 1st of January, February 12th (Lincoln Day), 22d of February, 30th of May, 4th of July, December 25th, 1st Monday of September (known as Labor Day), Thanksgiving, or fast days, or on the Monday next following such day, when such day occurs on Sunday, are presentable for payment or acceptance on the secular day next preceding such holiday. On Saturday of each week, banking hours end at 12 o'clock noon; and Saturday shall for the acceptance and maturity of paper above referred to, and only for such purpose, be treated as a holiday, and any and all of the evidence of indebtedness above enumerated or referred to, shall, for every purpose be considered due on the next following business day, except that this does not apply to checks or demand drafts on banks or bankers presented before 12 o'clock noon on Saturday. Damages for protested bills, foreign, are from 2 to 8 per cent, according to location of State where protested. Protests of inland bills of exchange and promissory notes, protested without this State, shall be *prima facie* evidence of the facts therein stated.

Powers of Attorney. Where a deed is executed by a power of attorney it is recorded with the deed. Powers of attorney to convey real estate must be executed and acknowledged in the manner required for the execution and acknowledgment of the conveyance itself.

Probate Law. (*See Administration of Estates, Appeals, Assignments and Insolvency, Collateral Inheritance Tax, Courts, Descent and Distribution of Property, Husband and Wife, and Wills.*)

Protest. (*See Notes and Bills of Exchange.*)

Replevy. Replevin lies for goods wrongfully detained, in which the plaintiff has a general or special property with right to immediate possession. A writ of replevin can not issue except upon an affidavit in which the affiant states the true value of the goods to be replevied, and that he believes that the plaintiff is entitled to the immediate possession of the same, nor until the plaintiff furnishes a bond with sufficient surety in a sum double the value of the property.

Suits. (*See Actions.*)

Taxes. Land may be sold for delinquent taxes after due advertising, only so much being sold as is necessary to pay taxes and costs. Owner has one year in which to redeem, by paying the purchase money, with 12 per cent interest. Bonds, notes, or other choses in action, except bonds and notes secured by mortgage on real estate situated in this State, may be exempted from all local taxation by paying to the State a tax of 1 per cent on the face amount thereof for five years, or at the option of the holder thereof for a greater or less number of years at a proportionate rate. All property, in excess of ten thousand dollars in value, within the jurisdiction of this State, whether belonging to inhabitants of this State or not, which shall pass by will or by the intestate laws of this State, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor, shall be subject to a succession tax, as follows: Property passing to the parent or parents, husband, wife, or lineal descendants, or legally adopted child of the deceased person, shall be liable to a tax of one-half of 1 per centum of its value for the use of the State, and any such estate or interest therein, which shall pass to collateral kindred or to strangers to the blood, or to any corporation, voluntary association or society, shall be liable to a tax of 3 per centum of its value.

Transfer of Corporation Stocks. (*See Corporations.*)

Wills. All persons of the age of eighteen years, and of sound mind, may dispose of their estate (real or personal) by will. No devise, except for public and charitable uses, or for the care of cemeteries or graves, shall be made to any persons but such as are at the time of the death of the testator in being, or to their immediate issue or descendants. Wills must be in writing, subscribed by the testator, and attested by three witnesses, each of them subscribing in his presence, but they will be effectual here if executed according to the laws of the State or country where executed. If, after the making of a will, the testator shall marry, or if a child is born to the testator, and no provision is made in the will for such contingency, such marriage or birth shall operate as a revocation of such will. A will or codicil is otherwise revoked by burning, canceling, tearing, or obliterating it by the testator, or some person in his presence by his direction, or by a later will or codicil. A devise or bequest to a subscribing witness, or to the husband or wife of a subscribing witness, is void, unless the will is otherwise legally attested, or unless the devisee or legatee be an heir to the testator. Wills are proved and estates settled in the probate court in the district where the deceased resided.

SYNOPSIS OF THE LAWS OF DELAWARE

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by ROBERT H. VAN DYKE, Esq., Attorney at Law, Dover. (*See Card in Attorneys' List.*)

Acknowledgment. (*See Conveyances.*)

Actions. Suit may be commenced by capias, summons, and (where defendant is non-resident) by attachment of property. Summons in justice's court may be issued returnable in four days from date of service, or may be made returnable forthwith, if the justice be satisfied there is danger of the plaintiff losing the benefit of his process by delay. In superior court the summons must be served personally on debtor before court sits, or by leaving a copy of the summons at his usual place of abode, in presence of some white adult person, six days before court sits. Service by publication allowed in the court of chancery only.

Affidavits may be administered in the State by the chancellor, any judge, justice of the peace, or notary public; and out of the State by any official duly authorized to take acknowledgments of deeds, etc.; but before a notary public is preferable. The affiant must sign the affidavit.

Assignments and Insolvency. There is a domestic insolvent law, providing for a full surrender and equal distribution of all property, but it is very seldom used, and there is no provision in the act for the discharge of the debtor upon his making an assignment. The assignee must file a schedule of property assigned within thirty days, and two appraisers are then appointed by the chancellor. Assignments must be for the benefit of all creditors alike.

Attachments. Domestic attachment may be issued against an inhabitant of this State, after a return to a summons or capias issued ten days before the return thereof, of non est inventus, and proof of cause of action; or upon the filing of an affidavit "that the defendant is justly indebted to the plaintiff in a sum exceeding $50, and has absconded from the place of his usual abode, or gone out of the State with intent to defraud his creditors, or to elude process, as is believed." The writ directs the attachment of property and summons of garnishees. Attachment may be dissolved on entering security to satisfy any judgment to the extent of the property attached that may be recovered against the defendant. On return of attachment the court appoints three persons as auditors of the claims of creditors; the creditor attaching is allowed a double share for his diligence, not to exceed full amount of debt. Any creditor not duly presenting his claim receives no share in the distribution. Plaintiff is not required to give security. Wages are exempt from attachment in New Castle County except for board or lodging. Foreign attachment may be issued against any person not an inhabitant of the State after a return of non est as in domestic attachment, or upon affidavit being made "that the defendant resides out of the State, and is justly indebted to the plaintiff in a sum exceeding $50." Foreign attachment may also issue against a foreign corporation, but in this case the amount of the real debt must be particularly specified in the affidavit, and must exceed fifty dollars. Unlike domestic attachments the plaintiff in foreign attachment has the benefit of his own discovery and does not share with other creditors. It is similar to domestic attachment in all respects except as to appointment of auditors and distribution among creditors. The court or any judge upon petition may investigate any allegation in affidavit, except as to the amount of the debt, and dissolve the attachment if sufficient ground be not shown. Foreign attachment is otherwise dissolved by entering special bail.

Banks. There is no general banking act and but one State bank, which was chartered by the legislature in 1807. There are no official examinations and the bank is merely required to make a yearly report of its condition to the governor of the State. Banking companies can not be formed at present, as there has been no statutory provision for so doing. The holders of stock are taxed at the rate of one-fourth of one per centum on the cash value of each share of capital stock.

Bills and Notes. Acceptance should be in writing on the bill. All checks, notes, drafts, or bills, foreign or inland, payable without time or at sight, are due on presentment without grace.

Chattel Mortgages must be accompanied with an affidavit that the mortgage is made for the bona fide purpose of securing a debt, and not to defraud creditors, and if recorded within ten days from the acknowledgment thereof, is a valid lien for three years on personal property, the possession of which may remain in the mortgagor.

Claims Against Estates of Deceased Persons are paid in the following order: 1. Funeral expenses. 2. Bills for medicine, medical attendance, nursing, and necessaries for last sickness of the deceased. 3. Not more than one year's wages of servants in house and laborer on a farm. 4. Rent for not more than one year, either growing due or in arrears. 5. Judgments and decrees in equity against deceased. 6. Recognizances, mortgages, and other obligations of record. 7. Obligations and contracts under seal. 8. Contracts under hand for the payment of money, delivery of goods, wares, or merchandise. 9. Other demands. Administration is granted: 1. To the person entitled to the residue. 2. To one or more of the creditors. 3. To any suitable person, resident or non-resident. Bond must be given for an amount double the value of the estate. Notice must be given of claims against the deceased within six months from granting of letters (except claims of record), or executor or administrator is protected in paying debts of a lower grade. One year is allowed for settling the estate, and until the expiration of that time, he need not make distribution, nor is he chargeable with interest on the assets in hand. He may be removed upon sufficient cause. Letters granted in other States and produced under the seal of the officer or court granting the same, is competent authority for him to act in this State.

Contracts are joint and several, unless otherwise expressed.

Conveyances of Real Estate must be under seal (a scroll is sufficient), and should be executed before one witness at least. Deed may be acknowledged out of the State before any consul-general, consul, or commercial agent of the United States, duly appointed in any foreign country at the places of their respective official residence; before the judge of any district or circuit court of the United States, or the chancellor or any judge of a court of record of any State, Territory, or country, or the mayor or chief officer of any city or borough, and certified under the hand of such chancellor, judge, mayor, or officer, and the seal of his office, court, city, or borough, by certificate endorsed upon or annexed to the deed; or such acknowledgment or proof may be taken in any such court and certified under the hand of the clerk or other officer of said court, and the seal of said court in like manner. In case of such certificate by a judge, the seal of his court may be affixed to his certificate, or to a certificate of attestation of the clerk or keeper of the seal. Such acknowledgment may also be taken by any commissioner of deeds for this State, or by a notary public of any State or Territory. Wife must join in deed to bar dower, and husband to bar courtesy. A deed by a corporation may be executed and acknowledged by the president or other presiding officer duly authorized by resolution of the directors, trustees, or other managers, or by the legally constituted attorney of such corporation. Deeds must be recorded within three months after sealing and delivery, to avail against creditors, mortgagee, or bona fide purchasers, without notice.

Corporations. *General Corporation Act for all purposes other than banking.* Each stockholder is individually liable for the amount of capital stock not paid in in proportion to the amount subscribed by him. Corporations of other States may be sued in this State, and the property of the same found here may be seized by attachment. All foreign corporations must file with the Secretary of State, statement of assets and liabilities, and the name of its authorized agent upon whom process may be served; must pay a State tax of $50, and fees of Secretary of State (this State tax is paid but once) must file with the prothonotary of each county the name of authorized agent upon whom process may be served.

Costs. Non-resident plaintiffs may be required to give security for costs.

Courts. *Terms and Jurisdiction.* The different courts of the State are as follows: Supreme court; regular term at Dover third Tuesday in June and January. Court of chancery and orphans' court; regular terms, New Castle County, at Wilmington, on the fourth Monday in March and second Monday in September; Kent County, at Dover, third Monday in March and third Monday in September; Sussex County, at Georgetown, second Monday in March and first Monday in September. Superior court, and court of general sessions of the peace and jail delivery are held in Sussex County, on the first Monday in April and first Monday in October; in Kent County, on the third Monday in April and third Monday in October; New Castle County, court of general sessions of the peace and jail delivery on the first Monday in February, on the third Monday after the commencement of the April term in Kent, on the third Monday in September and on the third Monday in November. The superior court in New Castle County meets with the court of general sessions, etc., in February and September, and one week later in May and November. Oyer and terminer meets on call of judges. Jurisdiction —The superior court has jurisdiction in all civil cases, but if suit be brought for less than $50, costs will not be recovered. Justice's jurisdiction, $200.

Depositions. In any suit pending, the prothonotary, on application, enters a rule commission on the part of the applicant to any commissioner of the State or other person. The commission issues on ten days' notice of interrogatories filed. Exceptions to interrogatories must be filed before the commission issues, and are heard before a judge at chambers. Exceptions to the execution must be filed within two days after publication. If the commissioner employ a clerk, add "The clerk by me employed in taking, writing, transcribing, and engrossing the said depositions, having first duly taken the oath assigned to the said commission according to the tenor thereof."

Divorce. The superior court has sole cognizance for the following causes: 1. A divorce from the bonds of matrimony shall be decreed for adultery, desertion for three years, habitual drunkenness, impotency of either party at the time of marriage, extreme cruelty, or conviction, either in or out of this State, after marriage, of a crime by the laws of this State deemed felony, whether such crime shall be perpetrated before or after such marriage. 2. A divorce from the bonds of matrimony, or from bed and board at the discretion of the court shall be decreed for procurement of the marriage by fraud for want of age, the husband being under the age of eighteen years or the wife being under the age of sixteen years at the time of the marriage and such marriage not being after those ages voluntarily ratified; or for willful neglect on the part of the husband for three years to provide for his wife the necessaries of life suitable to her condition. The same court can decree marriages null and void which are prohibited by law for consanguinity or affinity; or between a white person and a negro or mulatto; or where either of the parties had, at the time of the marriage, another husband or wife living; or where either of the parties was at that time insane. No divorce from the bonds of matrimony shall be decreed by the court when the cause assigned therefor in the petition occurred out of this State, and the petitioner was a non-resident thereof at the time of its occurrence unless for the same or like cause such divorce would be allowed by the laws of the State or country in which it is alleged to have occurred.

Executions are a lien upon personalty from the time the sheriff received the writ, if actual levy be made within sixty days thereafter. Priority of lien remains in force three years. Execution may be issued within five years after date of judgment. An execution from a justice is a lien from time writ is received, if levy be made within thirty days, and priority of writ remains for two years. Execution can not issue after three years without revival. Goods and chattels of a tenant are liable to one year's rent in preference to the execution. There is no redemption on property sold under execution or mortgage. In New Castle County wages for a month of employés of corporations are preferred to the execution. Stay of six months is granted in courts of record upon judgments recorded for want of affidavit of defense, provided security be given within twenty days after judgment. In justice's courts defendant may have six months' stay, upon pleading his freehold; nine months' stay upon giving security.

Exemptions. No homestead law. Family pictures, Bible, and library; lot in burial-ground and pew in church; all wearing apparel, sewing machines in private families; tools of trade not to exceed $50 in Kent, or $75 in New Castle County; and to the head of a family in New Castle County $200 of personal property and in Kent County $150, consisting of household goods only. No additional exemption in Sussex. The provisions of the exemption law extend and apply to a person dying and leaving a widow, giving and securing to such widow the same benefit of exemption that her husband would have had if living. Wages are exempt from execution attachment in New Castle County except for board or lodging.

Frauds. Sale of goods void as to third parties, unless for a valuable consideration and the possession thereof be actually delivered to the vendee. A promise to pay the debt, default, or miscarriage of another to the extent of five dollars is binding if proved by the oath of the promisee; for an amount between five and twenty-five dollars must be proved by one credible witness or some memorandum in writing signed by the person to be charged therewith; for an amount exceeding twenty-five dollars there must be some memorandum or promise in writing signed by the party to be charged therewith.

Garnishment. All persons except public officers, attorneys, etc., are subject to summons as garnishees. Wages are not subject to garnishment in New Castle County except for board or lodging.

Holidays, Legal. January 1st, February 22d, May 30th, July 4th, first Monday in September, Thanksgiving Day and Christmas, and Saturday afternoon in New Castle County, excepting St. Georges Hundred. If legal holiday falls on Sunday the next day is observed. Negotiable paper falling due on legal holiday is due and payable on the next preceding secular day; if falling due on Saturday half-holiday, if not presented for payment before noon, is not due till the next succeeding secular day.

Homestead. There is no homestead law in Delaware.

Interest. Legal rate is 6 per cent. Any person who takes more for the use or the loan of money shall forfeit and pay to any one suing for the same a sum equal to the money loaned, one-half for the use of the State, and the other for the party suing.

Judgments of courts of record are liens upon all real estate of the debtor in the county where judgment is entered from their date, but the lien may be extended into either or both the other counties. Judgments can only be obtained in this State upon judgments in other States by suit, upon a certified copy of the record of said judgment authenticated under the Act of Congress passed May 26, 1790. Transcripts of judgments recovered before justices of the peace may be entered in the superior court and thus be made liens on real estate. Satisfaction must be entered within sixty days after payment.

Limitations. Contracts not under hand and book accounts three years, bills and notes under hand six years. Judgments and specialties are merely presumed to have been paid after the lapse of twenty years, but this presumption may be overcome by proof to the contrary. The statute does not begin to run in favor of non-resident debtor until he come into the State, in such manner that he may be served with process, and if a debtor remove after the cause of action has accrued, the time of his absence is not computed. On recognizances of sheriff, administrators' or executors' bonds, within six years from date. Bond of guardian within three years from the determination of guardianship.

Married Women retain their real and personal property owned at marriage or received from any person other than the husband. May receive wages for their personal labor, and prosecute and defend suits for preservation and protection of their own property, as if unmarried, and the rents, issues, and profits of their separate estate are not controllable by the husband. *Dower.* The widow is entitled to one-third part of all the lands and tenements whereof her husband was seized at any time during her marriage, unless she shall have relinquished such right, for and during the term of her natural life. If her husband die without issue or the children of issue, she takes a moiety instead of a third part of the real estate. A married woman of the age of twenty-one years and upward may dispose of her property, both real and personal, by will, without the written consent of her husband, but subject to his right of courtesy. Two or more witnesses are necessary for a will. Husband and wife may testify in all civil actions in which either or both are or may be parties to the suit.

Mortgages of Real Property are executed and acknowledged like other deeds. They become a lien from the time they are lodged with the Recorder. Upon foreclosure of same there is no redemption of property. A purchase money mortgage should be recorded within thirty days to avail against a subsequent innocent holder.

Proof of Claims. The full individual names of plaintiffs and defendants, together with style of doing business, must be stated; or if a corporation, the laws of what State under which incorporated. One of the plaintiffs, if a partnership, or the treasurer or cashier of a corporation, must make the affidavit to the amount claimed, giving an itemized copy of the cause of action attached thereto. It is advisable to have the affidavit made before a Notary Public, though it may be made before others. (See affidavit.)

Protest. (*See Bills and Notes.*)

Replevin. The writ issues out of the superior court to obtain possession of goods unlawfully taken or unlawfully detained. No affidavit is required, but before the officer to whom it is directed can execute it, the plaintiff or some substantial person for him must enter into bond to such officer in a penalty of double the value of the goods to be replevined, conditioned to prosecute the suit with effect, etc. Defendant may give counter bond and retain the goods.

Summons may be served on the defendant by stating the substance of it to him personally at any time before the return of the writ, or by leaving a copy of it at his usual place of abode, in the presence of some adult person six days before the return thereof. Against a corporation may be served on the president or head officer, if residing in the State, and if not, on any officer, director, or manager of the corporation. In chancery service may be had by publication under order of the chancellor. From a Justice service must be personal if forthwith, otherwise four days must intervene before hearing.

Taxes laid and imposed by the levy court of a county or by the State for its own purposes, are a lien upon all the real estate of the taxable upon whom they are imposed, for two years, and such lien has preference to all other liens against him. General assessments are made every four years.

Wills. Any person of the age of twenty-one years or upward, of sound mind, may make a will as well of real as personal estate. Every will must be in writing and signed by the testator, or by some person subscribing the testator's name in his presence and by his express direction, and attested and subscribed in his presence by two or more credible witnesses, or it shall be void. A will shall be proved before the register of the county in which the testator resided at the time of his death. A nuncupative will of personal estate not amounting to over $200 and pronounced by the testator in his last illness in the presence of two or more witnesses is valid if reduced to writing and attested by said witnesses within three days after. Children born after the date of the will of the parent are entitled to the same share of the parent's estate as if such parent had died intestate.

SYNOPSIS OF THE LAWS OF THE DISTRICT OF COLUMBIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by JOHN B. LARNER, Esq., Attorney at Law, Washington. (*See Card in Attorneys' List.*)

Accounts. In all cases of suits upon open accounts duplicate itemized copies of the account must be furnished as particulars of demand. One copy for the defendant and one to be filed.

Acknowledgment of deeds may be made before any judge of a court of record, chancellor, justice of the peace, notary public, or any commissioner of the circuit court of the District appointed for that purpose. The certificate of the clerk of court as to official character of the justice of the peace or notary should be annexed. Deeds made in any foreign country may be executed and acknowledged before any judge, chancellor, notary public, or any secretary of legation, or consular officer of the United States.

Actions. Justices of the peace have exclusive original jurisdiction where the amount claimed to be due, or the value of the property (in cases of replevin), does not exceed $100, and concurrent with the supreme court of the District of Columbia where the amount claimed, or the value of the property, does not exceed $300, and where amount exceeds $20 either party may have a jury trial, and no appeal unless amount exceeds $5. All costs of court are payable in advance, and non-residents are required to give bond on motion of defendant.

Administration. The Orphans Court, a special term of the supreme court of the District of Columbia, has exclusive jurisdiction of the settlement of estates. A written petition stating the facts in the case must be filed with the register of wills. This petition is acted upon by a justice of the supreme court of the District, who sits on Friday of each week, and as often in addition as may be necessary. All executors and administrators are required to give bond with two sureties owning real estate in the District of Columbia. A guardian is only required to have one bondsman. The testator may waive the giving of bond, but the court always requires a bond sufficient to cover the debts of the deceased. By act of Congress, certain trust companies incorporated thereunder may act as executor or administrator without bond, and corporations having power under their charters may act as sureties in all cases where individuals can. Creditors may be barred in thirteen months provided the required notice is properly published. Orphans Court may order sale of real estate to pay debts, in case personal assets are insufficient.

Affidavits. Affidavits for use in the District of Columbia should be taken before a justice of the peace, notary public, judge of any court of record, or a United States commissioner.

Aliens. Aliens may hold personal property in the District of Columbia, and may acquire real estate by descent. Alien corporations, by act of Congress, are prohibited from acquiring real estate.

Appeals. Appeals will lie from justices of the peace to the supreme court of the District of Columbia where more than $5 is involved. Appeals may be taken from the supreme court of the District of Columbia to the court of appeals of the District of Columbia in all cases where the supreme court has original jurisdiction. Appeals may be taken from the court of appeals to the supreme court of the United States in all cases involving more than $5,000, or where a constitutional question or some treaty with a foreign power is involved.

Arbitration. Parties may submit any matter in dispute to arbitration, and if the ordinary rules of law relating to such matters are observed, the award will be sustained by the courts.

Arrest. There is no imprisonment for debt in the District of Columbia. The court has the power to imprison for non-payment of alimony in divorce cases.

Assignments must be accompanied by inventory under oath, of all assignor's property, a list of creditors, with their residences and amount of their claims. Assignee must be resident of the District. Preferences prohibited. Assignment may be attacked before judgment obtained against assignor by bill in equity. Assignments are practically superseded by "Insolvency Act."

Attachments may issue at institution of suit or subsequently, upon affidavit of plaintiff or his agent, supported by that of one or more witnesses, showing right to recover, and that defendant is a non-resident, or evades service of process, or is about to remove, assign, dispose of, or secrete property with intent to hinder, delay, and defraud creditors. Creditor must give bond, with approved surety or sureties, for costs and damages if attachment wrongfully sued out.

Banks. All banks organized in the District of Columbia, except purely private banks, are subject to, and governed by, the acts of Congress applicable to national bank associations. (See Revised Statutes of the United States, Title LXII, Section 5133-5243.) Private banks are partnerships.

Bills and Notes. The common law of England relative to bills and notes, except where changed by statute, governs all cases in which they are involved. A law similar to the New York Negotiable Instruments Law is now in force in this District. Legal holidays are January 1st, February 22d, May 30th, July 4th, first Monday in September (Labor Day), December 25th, or the following day when any of these dates fall on Sunday, and such day as may be appointed by the President of the United States for fasting and prayer. Every Saturday is a legal half-holiday, and notes falling due on that date are not protested until Monday.

Chattel Mortgages. Chattel mortgages and chattel trusts must be recorded within twenty days from date of execution, otherwise they are voidable as against third persons.

Corporations for manufacturing, agricultural, mining, mechanical, insurance, mercantile, transportation, market and savings-bank purposes, may be formed by any three or more persons by executing and recording certificate stating corporate name and object, term of existence (not exceeding twenty years, except where object is life insurance), the amount of capital stock, the number of shares, the number and names of trustees or managers for the first year, and the name of the place in the District in which the operations of the company are to be carried on. Nothing but money can be considered as payment of any part of the capital stock, and each shareholder is individually liable to creditors to an amount equal to the stock held by him. One-half of the

capital stock must be paid within one year, and the other half within two years, from incorporation. Foreign corporations doing business in the district are subject to service of process on their agents, or persons conducting such business, or by leaving copy at principal place of business therein.

Courts in session continuously throughout the year. Suits on contracts, accompanied by sufficient affidavit of right to recover, result in judgment in twenty days, exclusive of Sundays and legal holidays, after day of service on defendant, unless defendant files an affidavit setting forth facts which, if true, would in law constitute a valid defense.

Days of Grace has been abolished.

Descent and Distribution. The ordinary rules of descent may be stated as follows: 1. If an intestate leaves a child or children, or descendant of such child or children, his property descends to such child or children, or their descendants, subject only to the dower right of the widow, if there be one. 2. If the intestate leaves no child or descendant of such child, his property will descend to his brothers and sisters, if any, and their representatives, subject only to the widow's dower. 3. If the intestate leaves no children or their issue, and has no brother or sister, or descendant of such brother or sister, then his property, subject to the widow's dower, ascends to his father or mother, as the case may be, and their respective heirs. Personal property of an intestate is distributed as follows: 1. Where he leaves a widow but no children or next kin the widow takes all. 2. If he leaves a widow and children the former takes one-third and the latter two-thirds. 3. If he leaves a widow and next of kin but no children, the widow takes one-half and the next of kin the balance. 4. If he leaves children but no widow, the children take all. 5. The husband on death of the wife is entitled to all her personal property in possession without administration, but administration is usually resorted to for protection of parties dealing with the husband. 6. On failure of relations to the fifth degree the surplus belongs to the United States.

Divorce. Absolute divorces may be obtained in the District of Columbia for the following reasons: Where a former wife or husband is living. Where the marriage was contracted during the lunacy of either party. Where either party is matrimonially incapacitated at the time of the marriage. Adultery by either party. Habitual drunkenness for three years. Cruelty endangering life or health. Willful desertion for two years. Divorces mensa et thora may be obtained for habitual cruelty, or upon proof to the satisfaction of the court of a reasonable ground for fearing bodily harm.

Dower. A wife is entitled to dower in all real estate owned by the husband at the time of his death.

Executions may issue immediately upon rendition of judgment but liable to be superseded by appeal, accompanied by approved bond for payment, filed within twenty days after judgment, exclusive of Sundays.

Exemptions. In addition to wearing apparel, etc., household furniture to the value of $200, implements of debtor's trade or business to the value of $200, stock for carrying on business to amount of $200, one horse, harness and cart, wagon or dray, and earnings of married men or heads of families, not to exceed $100 per month.

Garnishments. Credits may be attached before judgment in case of non-residents, and after judgment in other cases. Money can not be attached in hands of the Government of the United States or the District of Columbia.

Interest 6 per cent, except that, by contract in writing, parties may stipulate for interest not to exceed 10 per centum. Oral contract for more than 6, or written contract for more than 10, per cent forfeits all interest, and entitles the debtor to sue for all interest paid under such contract, if suit brought within one year from time of payment.

Judgments lien on unincumbered real estate from rendition, and on personalty from delivery of execution to marshal. Incumbered real estate not affected by judgment until creditor's bill filed. Judgments valid for twelve years from date of last step taken to enforce same. In order to keep a judgment alive so far as execution against personal property is concerned for twelve years, a *fi fa* must be issued each year, but judgment may be revived by *sci fa*—on failure to comply with this rule. Real estate unaffected by judgments of justice of the peace, unless filed in supreme court. Judgments do not affect incumbered real estate until judgment creditor's bill is filed, but when such bill is filed it becomes a lien and is enforceable by sale of the property.

Limitations. Three years on simple contract debts, and twelve years on specialties, with usual exceptions in favor of persons under disability, other than non-residents. Part payment or a new promise will take the debt out of the statute.

Married Women have separate estate in all property owned at time of marriage, or acquired during marriage otherwise than by gift or conveyance from husband. May contract, sue and be sued in all matters having relation to such sole and separate estate; but the contract must be in a matter having relation to such estate.

Mortgages. Almost entirely supplanted by deeds of trust, requiring no court proceedings to foreclose. Joinder of wife necessary to bar dower where property is subject to no prior incumbrance. Chattel trusts voidable unless recorded in twenty days after date of execution, and invalid as to property exempt from execution, unless signed by wife. The mortgage can be used if desired.

Protest. Inland bills of exchange and promissory notes, as well as foreign bills of exchange, may be protested by notaries public, whose original protest, stating presentment, non-acceptance, or non-payment, and service of notice on any of the parties, specifying the mode of giving such notice, the reputed place of residence of the party notified, and the post office nearest thereto, is *prima facie* evidence of the facts contained therein.

Suits. Court costs are $10, and $1 additional for each defendant sued Marshal's fee for service of writ. For additional particulars, *see Courts.* Costs of judgment before justice of the peace are about $1.60.

Taxes. One and one-half per centum upon assessed value of property, real and personal. Penalty of 1 per cent per month for default in payment. Taxes are payable in two installments each year, one-half in May and the other half in November. New assessments are made every three years, by a permanent Board of Assessors. Under recent Act of Congress the taxes for 1901 are payable in one installment in May, 1901. The Act only applies to that year's tax.

Transfer of Corporation Stock. Stock in corporations may be transferred by endorsement in blank unless by express restriction. Forms of such transfers are always printed on back of stock.

Wills. To pass real estate, three witnesses required; valid as to personalty without witnesses. Wills pass only real estate owned by testator at time of execution, unless contrary intent expressly declared in instrument. Administrators appointed and duly qualified in any of the States may administer upon assets in the District without ancillary administration therein.

SYNOPSIS OF THE LAWS OF FLORIDA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. BLOUNT & BLOUNT, Attorneys at Law, Pensacola. (*See Card in Attorneys' List.*)

Accounts. Accounts for the purpose of limiting actions are divided into open accounts and store accounts. Store accounts cover any article sold by merchants and include both internal retail trade, and wholesale trade between resident and foreign merchants; open accounts include all other sales of goods, wares, and merchandise. Open accounts are barred in two years and store accounts in four.

Acknowledgments must in every instance be under official seal. If made in the State of Florida, may be made before any judge, justice of the peace, clerk or deputy clerk of a court of record, or notary public; if made out of the State, and within the United States, before any judge, clerk of court of record, or notary public, or justice of the peace, or a commissioner of deeds for Florida; if made out of the United States, before any commissioner of deeds appointed by the governor of the State to reside in such country, or any notary public of such foreign country, or before any minister charge d'affaires, consul-general, consul, vice-consul, commercial agent, or vice-commercial agent of the United States appointed to reside in such country. Conveyances of dower and powers of attorney for the execution of deeds to real estate must be executed in like manner as conveyances of real estate. A wife's acknowledgment must be taken separate and apart from her husband's. Officers must certify that the grantors are known to him. The following is the usual form adopted, viz:

State of Florida, }
County of ..... }

Before the subscriber personally appeared ....and .....known to me to be the individuals described, who acknowledged that they executed the foregoing conveyance for the uses and purposes therein expressed; and the said..... .....wife of the said ..... .acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion, or constraint of, or from, her said husband, and for the purpose of renouncing and relinquishing all her right, of whatsoever kind, in and to said property.

Given under my hand and seal official this .....day of.....19....

Actions. Suits shall be begun only in the county (or, if less than $100 in justice district) where the defendant resides, or where the cause of action accrued, or where the property in litigation is. If brought in any county where defendant does not reside, the plaintiff, or some person in his behalf, shall file with the precipe or bill in chancery, an affidavit that the suit is brought in good faith and with no intention to annoy the defendant. This latter provision does not apply to suits against non-residents. Where there are joint defendants, suit may be brought in any court (or justice district) where any one of the defendants reside. Corporations (domestic) can only be sued in a county where they keep an office. Foreign corporations may be sued in any county where they have an agent.

Administration of Estates. Upon the death of a person intestate or having made a will but appointing no executor, the probate court appoints an administrator, preferring first the next of kin; but if none such apply, then, upon notice given by publication, any creditor or suitable person. No minor can be appointed. If no one applies for letters of administration within sixty days after death, the probate court may order the sheriff to act. The administrator appointed by the court must give bond in amount to be fixed by the probate judge, respect being had to the value of the estate. The sheriff when acting as administrator is liable upon his official bond. Claims against an estate are barred after two years from date of notice given by administrator to present same. Debts against the estate are payable in the following order: 1. Necessary funeral expenses. 2. Debts due for board and lodging during last sickness. 3. Physicians, nurse, and druggist during last sickness. 4. Judgments recovered during lifetime of deceased, and all debts due the State. 5. All other debts, without distinction of rank. Debts due more than five years prior to death are barred, saving to married women, minors, and persons non compos mentis, imprisoned, or out of State, three years after removal of disabilities. Land is assets in the hands of the administrator or executor to pay debts; but he must first show exhaustion of personal property and obtain leave of the court. The compensation of the administrator is determined by the court and, in addition to compensation for his ordinary duties, not to exceed 6 per cent of money received for sales made of personal and real property. Administrators must make annual settlements before the first day of June each year or forfeit commissions.

Affidavits may be made before any judge, clerk of the circuit and supreme courts, justice of the peace, or notary public.

Aliens. No distinction between and citizens, except that they are not allowed to vote.

Appeals. Appellate proceedings for the common law side are by writ of error, which must be sued out within six months from the date of the judgment. Writs of error operate as a supersedeas as a matter of course, if sued out within thirty days after the session of the court at which the judgment was rendered, provided bond is given, if plaintiff is appellant, sufficient to cover costs in lower and appellate courts, and if defendant is appellant, sufficient to cover the amount of the judgment and costs of both courts. Unless sued out within the time prescribed, writs of error only operate as a supersedeas by special order of the court and upon giving the bond above mentioned. The record must be filed in appellate court on or before the return day of the writ, under penalty of dismissal. Questions of fact can only be taken up by bill of exceptions, which must be presented within the term of the court unless by special order the time is extended. Recording the writ of error in the minute book by the clerk within ten days of its issuance or receipt by clerk gives appellate court jurisdiction of person of appellee. Appeals in chancery may be taken within two years, and the law governing writs of error as far as it relates to filing of transcripts of records and proceedings thereon and filing assignment of errors, the duty of appellate court in giving judgment, in causing execution of its decrees and quashing writs of error, are applicable to appeals in chancery. Notice of appeal in chancery must be filed with clerk and recorded in minutes. This gives appellate court jurisdiction.

Arbitration. Parties to the controversy may make a rule of court of any arbitration to which they may desire to submit by filing a statement of agreement of the matters they desire to arbitrate in writing with the court having jurisdiction, which statement shall include the names of the arbitrators and the umpire. An award upon such arbitration can

only be set aside for fraud, gross negligence, or misbehavior of one or more of the arbitrators or umpire, or evident mistake acknowledged by the arbitrators or umpire, who made and signed the award.

Arrest. No arrest for non-payment of money unless it be for non-payment of a fine lawfully imposed.

Assignments and Insolvency. Assignments by insolvents are provided for by law. Preferences are not allowed. All property, except that which is exempt, must be surrendered to the assignee. Assignee gives bond and winds up estate. The assignment does not release debtor from debts not satisfied by it.

Attachment process may issue upon affidavit made, setting forth that amount is actually due; that plaintiff has reason to believe defendant will fraudulently part with his property before judgment can be recovered, or is actually removing his property, or is about to remove it out of the State, or reside beyond the limits thereof, or is actually removing out of the State, or absconds or conceals himself, or is secreting property or fraudulently disposing of same, or actually removing, or is about to remove, beyond the judicial circuit in which he, she, or they reside. Attachment may also issue for a debt not due, but which will become due within nine months, upon affidavit stating that the debt is actually existing, and that the defendant is actually removing his property beyond the limits of the State, and is fraudulently disposing of his property for the purpose of avoiding the payment of his just debts or demands. Proof must, also, be exhibited to the officer by affidavit other than that of the plaintiff, of the existence of the special ground. The making of the affidavit causes all debts to mature for the purposes of the suit. Plaintiff must give bond, with two securities, in at least double the debt or sum demanded. No arrest allowed in civil actions. Writ of garnishment may be issued at commencement of suit or at any time afterward, provided the plaintiff, his agent or attorney, will make affidavit that he does not believe the defendant will have in his possession, within the State and county, visible property on which a levy could be made, sufficient to satisfy such execution as he believes he shall be able to obtain, and that affiant expects to obtain a judgment for (a specified amount).

Banks. There may be established, by **five** or more persons, in any incorporated town or city having 3,000 or more inhabitants, a banking association or institution, with corporate powers or privileges, with a capital of not less than $50,000. In towns of not more than 3,000 inhabitants the capital may, with the comptroller's approval, be not less than $15,000. Savings banks may have not less than $20,000 capital. Banks are formed as other corporations are, and can not begin business until authorized by the comptroller. The comptroller of the State may inspect and supervise the business of the bank, and inspect and examine its books, papers, documents, minutes, and everything pertaining to the acts of the bank. Banks are required to make a semi-annual return to the State comptroller of resources and liabilities, and advertise in January of each year amount of stock, property, and contractual indebtedness. Before organization 50 per cent of the capital stock must be paid in cash; 10 per cent each month thereafter. Stockholders are individually liable to the extent of their stock at the par value thereof, in addition to the amount invested in said shares. Directors must be citizens of the United States, and own ten shares of stock of $100 per share. The comptroller, with the aid of the courts, winds up the affairs of insolvent banks.

Bills of Lading. Bills of lading are evidence against the carrier of the direction by which freights are to be received, carried, and delivered—and the officers, agents, and employes of the carrier are required to comply with the terms of the bill of lading under penalty of criminal prosecution.

Chattel Mortgages and Deeds of Trust. All conveyances intended to secure the payment of money are mortgages. Chattel-mortgages must be recorded or the property delivered to mortgagee to make them effectual against bona fide creditors and purchasers for value. Injunction will be granted against the removal of mortgaged personalty from the State; can only be foreclosed by bill in chancery unless under $100, and upon personal property, when a common law action may be brought in justice of the peace court, and mortgage filed with precipe. The form and effect of trust deeds have not been disturbed by statute.

Collateral Security. It is a misdemeanor to sell, pledge, loan, or in any way dispose of collateral security without the consent of pledgor. A written agreement may be made at the time of making the pledge for the sale of the collateral in such manner and upon such terms as the parties may desire.

Contracts. In order to bind an administrator personally, or one for the debt or default of another, or one upon an agreement made in consideration of marriage; or upon contracts for the sale lands, tenements, or hereditaments or any uncertain interest therein, or for any lease thereof for a period longer than one year; or upon an agreement not to be performed within one year, there must be an agreement, note, or memorandum thereof in writing signed by the party to be charged, or some one lawfully authorized by him. Contracts for the sale of personal property must be in writing, or the property must be delivered or earnest money paid. Newspapers must either be subscribed for or ordered in writing.

Conveyances. *(See Acknowledgments.)* All conveyances of real estate, or any interest therein for a term of years of more than two years, must be by deed in writing, signed, sealed and delivered in the presence of at least two subscribing witnesses; and in order to be effectual against subsequent grantees or incumbrances, must be recorded. The wife's separate estate can be conveyed only by the joint deed of herself and husband, and confirmed by her acknowledgment, taken separate and apart from her husband.

Corporations may be organized for any lawful business under a general law. Stockholder liable only for amount unpaid upon subscription. Charter fee of $2 for every $1,000 of capital stock, payable to the State, but no fee is less than $5 and none over $250.

Courts. Circuit courts hold two terms a year in each county, and have original jurisdiction in all equity cases, also in all cases at law not cognizable by inferior courts. County courts have jurisdiction of amounts not exceeding $500. County judges, at all times open for probate business, have full probate powers, have also civil jurisdiction to extent of $100. Justice's jurisdiction, $100.

Days of Grace are abolished.

Depositions may be taken upon commission when witness resides out of the county, or is bound for sea, or is about to go out of the State to remain until after the trial of the cause, or is very aged or infirm; or when oath is made that a material part of the case or defense depends upon the testimony of such witness. The time for the suing out of the commission, the names of the witnesses, and the name of one commissioner must be given to opposite side a reasonable time before commission is issued. Printed instructions for the guidance of commissioners usually accompany commission. Fees of not less than $5.00 a witness are to be taxed as costs by the clerk and paid by losing party.

Descent and Distribution of Property. Property descends: 1. To the children and husband in equal shares. 2. If there be no children then all to the husband or wife. 3. If there be no children, husband or wife, then to the father. 4. If no father then to the mother, brothers and sisters and their descendants. 5. If there be no brother or sister, then the estate shall be divided into moieties, one of which shall go to the paternal, and one to the maternal branches in the following course: 1. To grandfather. 2. To grandmother, uncles and aunts. 3. To great-grandfathers. 4. To great-grandmother, brothers and sisters of great-grandfathers, etc., passing first to nearest lineal male and then to lineal female ancestors and their descendants. The estate of an infant decedent, if derived from father's side, shall pass to father, brothers and sisters, and paternal relatives, and if derived from mother's side, shall pass to mother, brothers and sisters, and maternal relatives. Half-bloods inherit only one-half. Adopted children are treated as children of blood. Bastards inherit and transmit through mother's side, as if legitimate. Aliens have same right as citizens. There are no entailed estates nor right of survivorship.

Divorce. Only absolute divorces are granted, and upon the following grounds: Adultery, natural impotence, prohibited degrees of kinship, extreme cruelty, habitual indulgence in violent temper, habitual intemperance, willful and continued desertion for one year. Divorce obtained in another State or country; that either party has another husband or wife living. Alimony or suit money will be granted upon wife's application and will be allowed upon same grounds as would justify an absolute divorce. Party seeking divorce must have been a resident of State for two years, except when adultery is charged any citizen of the State may file a bill without regard to length of residence.

Dower. The widow is entitled to one-third of the real estate for life, and one-third of the personalty in fee simple. May within one year elect to take a child's part in lieu of dower.

Executions. Executions can be issued immediately upon the entry of the judgment and within three years thereafter, and are a lien upon real estate from date of entry, and upon personal property from the time the sheriff receives them. They can be renewed at any time within twenty years from entry of judgment. Both real and personal property are subject to sale under execution. Executions are returnable when satisfied, sheriff reporting progress at each term. Sale day first Monday in each month. No stay law. No redemption of property sold under execution.

Exemptions to every head of a family residing in the State homestead of 160 acres of land, and improvements, if in the country; one-half acre of ground, if in an incorporated city or town, together with $1,000 worth of personal property. The exemptions in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner. No property is exempt from sale for taxes or assessments, or for obligations contracted for its purchase, or the erection or repair of improvements thereon, or for house, field, or other labor performed thereon. The wages of every laborer who is the head of a family residing in the State, are exempt from garnishment.

Fraud. *(See Limitations of Actions.)* Obtaining money or property under false pretense or by falsely personating another, are punishable criminally.

Garnishment. *(See Attachment.)*

Holidays. *(See Notes and Bills.)*

Husband and Wife. The husband has full control of wife's property and is not chargeable by the wife with the rents and profits. Must be joined with wife in sales of her property. Homestead can only be alienated by their joint execution. Husband not liable for wife's antenuptial debts. Has no interest in her separate earnings. Has action for negligence causing her death; wife's property not generally liable for husband's debts.

Interest. Eight per cent is allowed on judgments and contracts where interest is payable but no rate is specified. Contract for more than 10 per cent is usurious, and all interest forfeited.

Judgments of a court of record are a lien for twenty years upon real estate of debtor within the county where rendered, and may be extended to other counties by recording certified transcript of judgment in any county where a lien is sought. Judgments of justice of the peace may be made a lien upon real estate by recording in the office of clerk of circuit court.

Limitations of Actions. Civil actions can only be commenced within the following periods after the cause of action shall have accrued, to wit: Actions for the recovery of real property if the adverse holding is under color of title—actions on judgments of courts of the United States, or of any State or Territory other than Florida itself, in seven (7) years. Actions for recovery of real estate where the adverse holding is merely a squatter's claim—actions on Florida judgments—actions on contracts or obligations in writing under seal, twenty (20) years. On contracts in writing *not* under seal, five (5) years. Actions for any article charged in a store account, and on all actions not herein specifically mentioned, four (4) years. Trespass to realty, taking, detaining or injury to chattels, for relief on the ground of fraud, upon contract not founded upon instrument of writing, except open account for goods, wares and merchandise, three (3) years. Actions for libel, slander, assault and battery, false imprisonment and open account for goods, wares and merchandise, two (2) years. Actions against railroad companies for killing cattle, and any action by the State for a statutory penalty or forfeiture, one (1) year.

Married Women retain their property, real or personal, owned at marriage or acquired thereafter by gift, devise, descent, or purchase, and it is not liable for husband's debts except by her written consent executed according to law regulating conveyances of married women. Husband must join in all sales, transfers, and conveyances of the wife's property, except when he has been adjudged insane for more than a year. Wife may sue concerning her real estate without joining her husband with her in the suit. Widow takes as dower a life estate in one-third part of the real estate of which her husband was seized and possessed at any time during her coverture, and an absolute one-third of all personalty; or may at her option take as an heir equally with the children of the husband, and if there are no children she will inherit all the property, real and personal.

Mortgages of real estate must be executed and proved or acknowledged in the same manner as deeds, and, to be effectual against creditors or bona fide purchasers, must be recorded. Are foreclosed by bill in equity in the circuit court. Chattel mortgages must be recorded, unless property is delivered to mortgagee and remains in his possession; becomes subject to debts of mortgagee if left in his possession more than two years without the mortgage being recorded.

Notes and Bills of Exchange. There is no definition by statute or decision of commercial paper, and no requirement that it shall be made payable at a bank or any fixed place. Five per cent damages are allowed on foreign commercial paper protested in this State. Bills of exchange, bank checks, and promissory notes which are presentable for payment or acceptance on Sunday, New Year's Day, Christmas Day, 3d of June, 4th of July, 22d of February, 19th of January, 26th of April, first Monday in September, and general election day, on Saturday (except demand paper, which may be presented before 12 o'clock Saturday unless the whole day is a holiday), or any day appointed by the President of the United States or by the Governor of the State as a day of thanksgiving or fasting or prayer or other religious observance, shall be deemed presentable for payment or acceptance on the secular or business day next succeeding such holiday.

Powers of Attorney. Any contract or conveyance may be made by power of attorney. A conveyance of a married woman's real estate by power of attorney in order to be valid the power of attorney must be acknowledged by her separate and apart from her husband, and the acknowledgment must state that she executes it freely and voluntarily, without compulsion, fear, apprehension, or constraint of or from her husband. Powers of attorney for the conveyance of real estate must be recorded.

Probate Law. (*See Administration of Estates.*) The county judge has original jurisdiction of all matters relating to the administration of estates of decedents.

Protest. (*See Notes and Bills of Exchange.*)

Replevin lies for goods or chattels wrongfully taken, except when taken for taxes, or under execution, or at suit of defendant when the property was originally replevied from defendant and has been delivered to plaintiff, or when plaintiff is not entitled to possession. Affidavit must be filed, describing property sought to be recovered, and stating that it was not taken for any tax, fine levied by virtue of any law of the State, nor seized under execution or attachment against the goods and chattels of the plaintiff; liable to execution and bond in double the value of the property with two sureties given before the writ is issued. Defendant may release the property within three days by forthcoming bond.

Suits. Actions at law are commenced by filing a precipe with the clerk. Personal service is required except in suits by attachment. Writs are returnable on the next rule day, provided ten days intervene; if not, then on the rule day in the next succeeding month. If no appearance of defendant, default is entered forthwith. Default may be entered for want of plea or other pleading on rule day, next after appearance day.

Taxes. Taxes are due and payable on the first Monday of November, and if not paid by first day of April property may be sold. Owner has two years within which to redeem. Taxes are a lien from the date of the assessment, and have the force and effect of a judgment upon which execution may issue.

Wills. Any person over twenty-one years old and of sound mind may make a will. This includes married women. Wills of real estate must be signed by testator or some person in his presence and by his express direction, and must have two witnesses who must subscribe in testator's presence. Wills of personal property must be in writing and signed by the testator or some one in his presence, and by his express direction. Nuncupative wills are good as to personal property. Revocation must be in writing, attested by three witnesses. Wills must be probated before admittance in evidence. Foreign wills, when duly probated according to laws of this State, where made and duly recorded in this State, are as effective as wills executed in this State.

SYNOPSIS OF THE LAWS OF GEORGIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by WILLIAM D. ELLIS, Attorney at Law, Atlanta.
(*See Card in Attorneys' List.*)

Accounts. Accounts bear interest from the date they become due at 7 per cent per annum, and may be proved by the affidavit of plaintiffs, but when sued and denied, testimony to establish them must be produced orally or by answers to written interrogatories, or by depositions taken upon notice; but the latter method will not do for witnesses examined outside of the county where suit is pending.

Acknowledgments. (*See Deeds.*)

Actions. All distinction between suits at law and in equity is abolished. All suits must be brought by petition, to which process is annexed by the clerk bearing test in the name of the court where suit is brought. Petitions must be filed twenty days before the term of the court, to which they are returnable, commences. Equitable relief can be had in superior courts of law. All suits stand for trial at the second term, except in courts of special jurisdiction, which are organized in some counties, and where by special statute trials may be had at the first term, such as the city court of Atlanta. The general rule is varied, however, in cases of suits or distress for rent. In all suits on unconditional contracts in writing judgment will be rendered by the court without a jury, unless the defendant tenders issue by filing a defense under oath at the first term. In suits on open account where there is personal service, and no defense filed, verdicts may be rendered without proof. Suits in justice courts are brought by summons issued fifteen days before the meeting of the court at each monthly session.

Administration of Estates. Letters of administration issue in the line of preference, first to the husband or wife, second to the next of kin, relations by consanguinity are preferred to those by affinity. If there are several next of kin in the same degree, preference is given to that one selected in writing by those most interested in the estate. If no preference is expressed the ordinary exercises his discretion. If no application is made by next of kin a creditor may be appointed, and if no application is made the ordinary will vest the administration in a county administrator, an officer authorized by statute for that purpose. Administrators must give bond in double the value of the estate. Application for administration must be published once a week for four weeks, and administrators must advertise their appointments and give notice to debtors and creditors. They are exempt from suit for twelve months, to give them time to collect in the assets. They are required to make annual returns, to wit, in July of each year. Out of the estate of each deceased person, the first charge, after funeral expenses, is a year's support for the family, to be laid off by commissioners according to the condition and standing of the family. Debts are to be paid in the following order: 1. Funeral expenses, including physician's bills, and other expenses of the last sickness. 2. The costs of administration and the twelve months' support. 3. Taxes and debts due the State and the United States. 4. Debts due by the deceased as administrator, guardian, or trustee. 5. Judgments, mortgages, and other liens created by deceased in his lifetime. 6. Debts due for rent. 7. All liquidated demands, including foreign judgments, bonds, and other obligations in writing. 8. Open accounts. Executors and administrators are authorized to compromise doubtful claims, or to submit them to arbitration. Foreign administrators may act in this State on giving bond, in a sum equal to double the value of the estate, to the ordinary where they qualify. The bondsmen must be residents of this State. A citizen of any other State may act as executor of the will of a deceased citizen of this State when he has the same interest and will give the same bond as in the case of foreign administrators. Administrators of other States may sue in this State by filing in the office of the clerk of the court, to which suit is brought, a properly authenticated copy of his letters of administration.

Affidavits. Pleas and defenses in the courts of this State which are required to be under oath, may be made before any official of the State or county where the oath is made, who is authorized by the laws of such State or county to administer oaths. *Prima facie* the official attestation of the officer is evidence that he was authorized to act. Any non-resident complainant or defendant seeking equitable relief, when called on to verify proceedings, should be sworn before a commissioner of this State, or a judge of a court of record where the oath is made, with the attestation of the clerk of such court that the signature of the judge is genuine, and that the court over which he presides is a court of record.

Aliens. The subjects of governments at peace with the United States and this State are entitled to the rights of citizens of other States, resident here, in so far as they accord to them the privilege of purchasing, holding, and conveying real estate.

Appeals. (*See Courts.*)

Arbitration. Under the law of Georgia disputes and controversies relating to rights, or property, may be submitted to arbitration. Three arbitrators shall be selected, and their award must be made the judgment of the superior court to be binding on the parties. Submission to arbitration must be in writing and contain an accurate statement of matters in controversy, and shall be signed by the parties or their agents, and delivered to one of the arbitrators. Arbitrators are selected one by each of the contesting parties, and the two thus chosen shall choose a third, and the three thus chosen shall constitute a board of arbitration. The board shall be sworn and have the power of a court in the production of witnesses, and hearing testimony. When awards are returned to the superior court they may be attacked by suggestion under oath that they were the result of accident, or mistake, or fraud, and on such suggestion the court shall cause the issue to be submitted and tried by a jury.

Arrest. The constitution of Georgia declares that there shall be no imprisonment for debt. But in an action to recover personal property, where affidavit is made by the plaintiff that he has reason to apprehend that such property will be eloigned or moved away, or will not be forthcoming to answer the judgment or decree, the defendant will be arrested by the officer to whom process is directed, and will be committed to jail unless he shall give bond and good security, or deliver up the property, or show to the satisfaction of the court that it is without his power to produce it. Imprisonment as for contempt may be inflicted in the administration of equity powers, but the defendant or party adjudged in contempt may demand a jury trial on matters of fact. Attorneys, sheriffs, and other officers of court, may be imprisoned on attachment for failure to pay over money under order of the court.

Assignments. Assignments for the benefit of creditors are permitted and an insolvent debtor may prefer one creditor to another, and for that purpose may execute conveyances by deed, or may create liens by mortgage, or sell out in payment of the debt, but a corporation which makes an assignment is denied the right to make a preference. Assignments must be executed in writing and with all the formalities of a deed, and must be recorded as deeds are. They must include all property and give the description thereof, and must also include all real and personal property and give a description thereof, and must also include all notes, bills and books of account. They must be verified by the affidavit of the party making such assignment. Within fifteen days after the making of an assignment, a list of the property verified by affidavit must be filed therewith. No property in this State shall pass by assignment of foreign corporations unless such assignment shall comply with the requirements of Georgia laws. Assignees must give bond upon request of three creditors. Preferred debts are not to be paid until sixty days after filing the deed of assignment. Assignments can only be set aside by direct application for that purpose and the assignee and assignor are necessary parties. On attack for fraud it shall not be necessary to prove fraud in the assignee. No creditor is required to reduce his claim to judgment before seeking equitable relief against assignee or assignor, or both. Creditors must be notified within thirty days of making an assignment, and when there is an attack made on the assignment, creditors shall also be notified. Accidental or innocent mistakes may be cured by amendment. Fraud in the debtor will make the assignment void though no fraud be found in the assignee. Assignments, or transfers, by a debtor, insolvent at the time, of real or personal property, either in trust or in behalf of creditors, where any benefit is reserved to the assignor, or any person for him, will be held fraudulent as to creditors, and as to them null and void. All conveyances or transfer of real estate, whether in writing or otherwise, and all obligations, or contracts of all descriptions had or made with intention to delay or defraud creditors, and such intention known to the party taking, shall be void as to creditors. Voluntary conveyances made by an insolvent debtor are void.

Attachments. A summary process of attachment will lie in the following cases: 1. Where the debtor resides out of the State. 2. Where he is actually removing, or about to remove, without the limits of the county. 3. When he absconds. 4. When he resists a legal arrest. 5. Where he is attempting to remove his property beyond the limits of this State. 6. Where he has disposed of, or threatens to conceal, his property, liable for the payment of his debts, or shall make a fraudulent lien thereon to avoid paying his debts. Attachment will lie to recover the purchase money of an article sold when the debtor is still in the possession of the property. Attachments may issue upon affidavit by the plaintiff, his agent or attorney, who must swear that one of the state of facts exist which authorize an attachment, and also as to the amount of the claim. Bond and security, in double the amount sworn to, must accompany the affidavit, and the officers require personal security. The condition of attachment bonds is to pay the defendant all damages he may sustain in consequence of suing out the attachment. Judges of courts of records, justices of the peace, and notaries public, who are ex-officio justices of the peace, can issue attachments. Non-resident corporations are liable to attachment, and one non-resident may attach the property of another non resident in this State. Attachments, being issued, may be levied on the property of the defendant or they may be served by issuing process of garnishment. Property attached may be replevied, and garnishments may be dissolved, by giving bond with security, in the first instance to produce the property, in the second instance to pay the debt in the event that the fund reached by garnishment shall be held subject thereto. The liens of attachment as between

themselves shall take rank according to priority of levy, and the lien on such attachments will be superior to ordinary judgments rendered, in suits filed after the attachment, but final judgments on attachments, and ordinary judgments rendered at the same term, will be of equal dignity. Attachments may be dismissed if party seeking the process fails to strengthen a bond which may be required by the court on a preliminary hearing.

Banks Any number of persons, not less than three, may form a corporation for the purpose of carrying on the business of banking, by filing in the office of the secretary of the State a declaration in writing signed by each of them, stating their names and residence, the name and style of the proposed corporation, the location and principal place of business thereof, the amount of capital stock, and the number of shares into which it is divided, the purpose and nature of the business of the proposed corporation, with any other matters they may deem it desirable to state. Such declaration must be accompanied by the affidavit of the subscribers, verified by the ordinary of the county in which it is proposed to do business, that $15,000 of the capital subscribed has been actually paid by the subscribers, and that the same is in fact held, and is to be used solely for the business and purposes of the corporation. When the declaration is filed the secretary of State, upon application, shall certify and deliver to such subscriber a copy of such declaration and affidavit, and the subscriber shall publish it in the official organ of the county in which it is proposed to do business once a week for four weeks. When said declaration and affidavit shall have been published any subscriber may apply to the ordinary to certify the fact of such publication, and upon said certificate being filed in the office of the secretary of State he shall issue to the subscribers, their associates and successors, a certificate of incorporation under the seal of the State. Such corporation, when organized, has power to have continual succession for thirty years, with right of renewal; to sue and be sued; to have and use a common seal; to appoint officers and agents; to make by-laws; to hold, purchase, dispose of, and convey such real and personal property as may be necessary for its uses and business; to discount bills, notes, or other evidences of debt; to receive and pay out deposits, with or without interest; to receive special deposits; to deal in foreign exchange; to lend money upon personal security, or pledges of bonds, stocks, negotiable security; to take and receive securities by mortgage or otherwise on property, real or personal. The business of the corporation shall be under the management and control of a board of directors, to consist of not less than three nor more than seven of the members of the corporation, who must be owners and holders of one or more shares. The directors must be elected by the stockholders, at such time and place, and for such term as may be appointed by the by-laws. The capital stock shall be paid in as called for by the directors No bank shall be chartered without a capital subscribed in good faith of at least $25,000, of which not less than 20 per cent, and in no case less than $15,000 must be paid in before filing the declaration with the secretary of State. The corporation shall be responsible to its creditors to the extent of its capital and its assets, and each stockholder shall be individually liable for all debts of the corporation to the extent of his unpaid shares of stock, and shall be further and additionally liable, equally and ratably (and not one for another as sureties) to depositors of said corporation, for all moneys deposited therein in an amount equal to the face value of their respective shares. All corporations doing a banking business in this State shall make to the State bank examiner, under oath, statements showing the resources of the bank or corporation, at the close of business on any day specified by the bank examiner. No bank shall loan to its officers any money without good collateral. No bank or corporation doing banking business shall reduce its cash in hand, including amount due by banks and bankers, and the value of all stocks and bonds actually owned and held, below 25 per cent of demand deposits. No bank or corporation doing a banking business shall loan to any one person, unless such loan is amply secured by good collateral security, more than 10 per cent of its capital stock and surplus. Whenever the capital of a bank is impaired the shrinkage shall be charged on the books of the bank to account of profit and loss. In case of impaired capital the bank examiner shall require such bank to make good its capital so impaired or reduced by transfer from its surplus, or undivided profits, to the capital stock, of a sum to make good such impairment, and if there is no surplus or undivided profits then by assessment upon the stockholders. Banks may charge same rate of interest as individuals, and the rules of bank discount, that is to say, taking interest in advance within the lawful rates, have been held not usurious. The term "bank" includes the parent bank, its branches and agencies, its officers and agents, in construing the violation of an obligation, or the imposing of a penalty, for the acts of whom the bank, or branches as the case may be, is bound. No dividend shall be declared by any bank except from the net profits, nor shall the capital stock be applied to the purchase of its own shares. If the assets of a bank are insufficient to pay its liabilities, a receiver when appointed shall bring suit against the stockholders in his own name for their unpaid subscriptions. All conveyances, assignments, transfers of stock, or other contracts by a bank in contemplation of insolvency, or after insolvency, except for the benefit of all creditors and stockholders, shall be fraudulent and void, unless made to an innocent purchaser for value without notice or knowledge of the condition of the bank, and the officers making or consenting to such conveyances or contracts may be prosecuted criminally. In the absence of a contract, expressed or implied, to the contrary, the bank taking paper for collection is liable for the defaults of its agents and correspondents to whom the paper has been entrusted for collection. If any insolvent bank or banker, with notice of such insolvency, shall receive money or general deposit, and fail to pay the depositor within three days after demand, such banker or officer in charge of the bank receiving the deposit shall be punished as prescribed in the penal code. Suits may be brought against a bank for the acts of its agents in any county where said bank may now have, or may hereafter establish an agency.

Savings Banks. These are subject to the same rights, privileges, and immunities as other banks, and are liable to the same pains and penalties. Such institutions when they receive deposits, not subject to check, and pay interest thereon, may lend money at the legal rates of interest, and may add principal and interest together for a term of years, and divide the amount into monthly payments, and such transactions are held not to violate the usury law.

Bills of Lading and Promissory Notes. A bona fide assignee of a bill of lading of goods for a valuable consideration, without notice that the same were not paid for, and the purchaser insolvent, will be protected in his title against the seller's right of stoppage in transitu. Bills of exchange and promissory notes made for the purpose of negotiation, or intended to be negotiated at any chartered bank, and which are not paid at maturity, must be protested in order to bind the endorser. Notice of non-payment and of protest, for non-payment, or non-acceptance, must be given to the endorser within a reasonable time, either personally, or by post. It will not be necessary to protest in order to bind the endorser, except in the following cases: 1. Where the paper is made payable on its face, at a bank, or banker's office. 2. Where it is discounted at a bank, or a banker's office. 3. Where it is left at a bank or banker's office for collection. In all such cases, days of grace must be allowed, and the last day of grace is the day of maturity. Accommodation endorsers, sureties, and endorsers, may be sued in the same county and in the same action with the maker, drawer, or acceptor. The first day of January, twenty-second day of February, twenty-sixth day of April, fourth day of July, and twenty-fifth day of December, or any day appointed by the governor of this State, or the President of the United States, as a fast day, or thanksgiving day, shall be held and considered as Sunday for all purposes connected with presenting for acceptance or payment, and for protesting and giving notice of dishonor of any bill of exchange, draft, note, check, or order If a holiday fall on Saturday paper due on Sunday is payable on Monday, if holiday fall on Monday paper due on that day is payable on Tuesday. Bills of exchange must be accepted in writing to bind acceptor. In this State, a contract to pay attorneys' fees, cannot be collected unless a defense is filed and not sustained. A waiver of homestead in a promissory note is a bar to such a claim as against the collection of such note And such waivers are almost universally required in notes taken in this State. Promissory notes and contracts containing reservation of title to personal property, must be executed before a notary public, justice of the peace or clerk of a court of record, and must be recorded to hold such property as against third parties or innocent purchasers. (*See Notes and Bills of Exchange.*)

Chattel Mortgages and Deeds of Trust. Chattel mortgages must be in writing, and the execution thereof attested by a notary public, justice of the peace, or clerk of a court of record, and to be a lien as against the rights of any person without notice they must be recorded in the office of the clerk of the superior court, in the county where the mortgagor resides, and if the property is located in a county other than that in which the mortgagor resides, the mortgage should be recorded in that county also. No particular form is required for a chattel mortgage. Deeds of trust are authorized, and when they cover only personal property they should be executed with the same formality as chattel mortgages. But when they cover real estate they should be executed with the same formality as deeds to real estate. (*See Deeds.*) Chattel mortgages may include and cover stocks of goods changing to specifics, and may be executed so as to cover future purchases by the mortgagor. (*See Mortgages.*)

Collaterals. Collaterals are exempt from process of garnishment in the hands of the creditor. The holder of a note as collateral security for a debt stands upon the same footing as the purchaser. Holders of collateral securities may maintain suit thereon for their own benefit. The receiver in a pledge or pawn note is held to be such a bona fide holder as will protect him, under the same circumstances, as a purchaser, from the equities between the parties, but not from the true owner if fraudulently transferred. Property left in pledge or pawn may be sold at public sale to the highest bidder, upon thirty days' notice. A different method may be adopted by contract.

Contracts. All parties in this State may make contracts, but generally the contracts of married women, infants, insane persons, and drunkards, are void. The general rules in respect to these classes prevail. Gaming contracts are void, and evidences of such a debt are void in the hands of any person. Contracts for dealing in "futures," have been held by the supreme court of this State to be gaming contracts, and void. There is no particular form prescribed for contracts, and they may be made in writing, or by parol, except where required by the statute of frauds to be in writing.

Conveyances. (*See Deeds and Chattel Mortgages.*)

Corporations. Power to create corporations in this State is vested in the general assembly and the superior courts. Said courts may grant charters to all corporations except banking, insurance, canal, navigation, express, and telegraph companies and railroads. The general assembly may grant charters for the corporations above enumerated, but can not grant charters for other purposes, they being exclusively delegated, by the constitution, to the superior courts as stated The legislature, pursuant to a constitutional provision, have passed uniform laws authorizing charters for railroads and banks to be granted by the secretary of State, upon filing petitions therefor, setting forth the objects and purposes of the corporation, its place of doing business, and the capital to be employed. A charter for a private corporation is obtained by petition to the superior court, setting forth the object of the corporation, the particular business it proposes to engage in, the corporate name, the amount of capital to be employed, the place of doing business, and the time for which incorporation is desired, not exceeding twenty years—a renewal for a like period is provided for. The petition thus filed must be published once a week for thirty days, in a newspaper of general circulation, in the county in which the court sits. The petition, and the order of court granting the same, constitute the charter. In such corporations, the liability of the stockholder is measured by the amount of stock which he holds, and for any unpaid subscription due by him; in other words, there is no personal liability. In the charters of many banks now organized, the rule of personal liability varies, and in some banks stockholders are liable as partners; in others liability exists as under the general rule, viz.: to the extent of twice the amount of stock held, and in some banks, liability exists only to the extent of the stock and unpaid subscriptions thereon. The payment of 10 per cent of the capital stock is necessary before commencing business. Charter privileges expire, if no organization is had thereunder for the space of two years. General powers of corporations are conferred on all corporations organized in this State. Charters may be forfeited by wilful violation of any of the conditions on which they are granted, or by a misuser or a nonuser of their franchises.

Courts. The judicial system of this State consists of justice courts, courts of ordinary, superior courts, and such other courts of special organization and jurisdiction as the legislature may provide, and a supreme court. In the principal cities of this State, viz.: Athens, Augusta, Atlanta, Columbus, Macon, Rome, and Savannah, there are city courts and in some other towns these courts exist. In counties where there are no city courts, as a general rule, county courts exist. The terms, jurisdiction, etc., of these several courts, are as follows: *Justice Courts* hold monthly sessions and have civil jurisdiction up to $100. In criminal matters they are only committing courts. Suits are brought fifteen days before the beginning of each term, and stand for trial at the first term. Appeals lie in justice courts in cases where the amount involved is $50 or less to a jury in the same court, and if the amount of the claim is more than $50, either party may, as a matter of right, appeal to the superior court. *Courts of Ordinary* hold their sessions monthly, and have jurisdiction over wills, and the administration of estates, of the conduct of administrators, executors, and guardians. Appeals lie from this court to the superior court. (*See Administration of Estates.*) *County Courts* ha e

monthly and quarterly sessions. Their jurisdiction is limited to controversies not exceeding $300. Certiorari lies from these courts to the superior court. *City Courts* hold four sessions per annum, but the city court of Atlanta has six terms, beginning with the January term. The jurisdiction of city courts is unlimited, except in matters of divorce, matters involving titles to land, and administration of equitable relief under the equity powers of courts. (*See Superior Courts.*) Review of decisions made by city courts can only be had in the supreme court, and the method of review in these courts is the same as is provided for review of proceedings in the superior courts. *Superior Courts*—The State is divided into judicial circuits and superior courts are the highest courts of original jurisdiction. They have jurisdiction of all suits and controversies, and have exclusive jurisdiction in equity powers, divorce cases, and suits involving titles to lands, and on the criminal side, exclusive jurisdiction of all cases involving life, or imprisonment in the penitentiary. Superior courts have two terms each year. In all of these courts, except justice courts, and courts of ordinary, cases stand for trial at the second term. Decisions of the superior courts are reviewed by bills of exception to supreme court.

Days of Grace. (*See Bills of Lading and Promissory Notes.*)

Deeds. Deeds to real estate in Georgia must be in writing, and should be executed in the presence of two witnesses, one of whom shall be an officer authorized for that purpose. They should be recorded in the office of the clerk of the superior court of the county where the land lies, and all deeds, mortgages, and other liens, should be recorded immediately to be available against third parties and innocent purchasers. To authorize the record of a deed to realty, it must be attested by or acknowledged before, if executed out of this State, a commissioner of deeds for the State of Georgia, notary public, clerk of a court of record, or a consul, or vice-consul of the United States (the certificates of these officers under their seals being evidence of the fact). When the deed is executed out of this State before a notary public, the certificate of a clerk of a court of record, under seal of the court, shall be attached, showing that said notary is regularly commissioned and authorized by law to attest deeds. If the notary is appointed by the governor, such certificate shall be made by the secretary of State. In case of acknowledgment it is better, as a matter of precaution, always to have two witnesses, besides the officer who takes the acknowledgment. If executed in this State, it must be attested by a judge of a court of record of this State, or a justice of the peace, or notary public, or clerk of the superior court, in the county in which the three last mentioned officers respectively hold their appointment, or if subsequent to its execution the deed is acknowledged in the presence of either of the named officers, that fact, certified on the deed by such officer, shall entitle it to be recorded. [Act of 1893.] Deeds to secure loans are in more common use than mortgages because they have been held to pass the absolute title and protect against year's support and dower, the equity of redemption remaining in the maker, can not be levied upon until the debt to secure which the deed has been made has been paid off. Usury will, however, void such a conveyance.

Depositions. Testimony is taken in this State by written interrogatories where the witness is a female, or where the witness does not reside in the county where the suit is pending, or by reason of disability is unable to attend court. In counties within this State, having a population of over 20,000, depositions may be taken upon five days' notice to the other party of the time and place at which the witness is to be examined. This process cannot be used for taking testimony outside of the State. In taking answers to interrogatories, which must be authorized by a commission issued for such purpose by the court here, two commissioners must act. Commissioners must be disinterested and not related to either party, or connected with the case; attorneys of the parties are incompetent. None of the parties to the case, nor their agents or attorneys, can be present when the commission is executed. The witness can only write his answer in the presence of the commissioners. It is usual, and the better practice, for one of the commissioners to write the answers of the witness as they are given. Depositions may be written with the typewriter, and commissioners may adjourn their sittings from day to day. The following instructions for taking testimony are important: Instructions for taking answers to interrogatories: 1. Insert the commissioners' names in the commission; any two respectable citizens will do. 2. State the case as you find it. Then comes the caption, thus:

State of..... } (Here insert the county and State where
County of..... } *ss.* the commission is executed.)

By virtue of a commission from the ..... court of ..... county, we have caused the person in said commission named to come before us, who being duly sworn true answers to make to certain interrogatories thereto annexed, deposeth and answereth as follows: (Here insert answers of the witnesses to each interrogatory in order.) 3. Let the witness sign the answers; then say: "Answered, sworn to, and subscribed before us, this ..... day of ....., 18..." Then sign your own names, adding the words "Commissioner (L. S.)" after each name. 4. Seal all up together, using two wafers, each commissioner writing his name with "Commissioner" across a wafer or seal. 5. State the case on the package, and address it to the clerk of the court issuing the commission. 6. If it is to go by mail, get the postmaster to receipt on the package, "Received from one of the commissioners (giving his name) the within interrogatories, to be forwarded by due course of mail," naming his post-office. Testimony thus taken must be sent by mail, or by some person specially authorized by the commissioner to carry it to the court.

Descent and Distribution of Property. The husband is the sole heir to his intestate wife, unless she leave children, and in that event the husband and children shall inherit per capita, but the descendants of children shall take per stirpe. If a man die without children, or the descendants of children, leaving a wife, the wife is his sole heir. If there are children, or those representing deceased children, the wife shall take a child's part, unless the shares exceed five in number, in which case the wife shall have one-fifth part of the estate. If the wife elects to take her dower, she has no further interest in the estate. Children stand in the first degree to the intestate, and inherit equally. Posthumous children stand upon the same footing with other children. Lineal descendants of children stand in the place of their deceased parents, and take per stirpe, and not per capita. Brothers and sisters stand in the second degree and inherit if there be no widow or children, or representatives of children. The half-blood on the paternal side inherit equally with the whole blood. The father, if living, inherits equally with brothers and sisters, and stands in the same degree. If there be no father, and the mother is alive, she shall inherit in the same manner as the father would. Real estate descends direct to the heirs, and personal estate to the administrator. But real estate is subject to administration for the purpose of paying debts, and if necessary for distribution.

Divorces. Total or partial divorces may be granted in this State. Suits can only be brought in the superior courts, and must be commenced by petition. Such suits stand for trial at the second term, and there must be two verdicts by separate juries, rendered at different terms, to authorize a total divorce. Divorce cases shall be brought and tried in the county where the defendant resides, if a resident of Georgia, and if the defendant is a non-resident, suit must be brought and tried in the county where the plaintiff resides. If the defendant is a non-resident, service may be perfected by publication in a newspaper in which the sheriff's advertisements are published, twice a month for two months. The jury rendering a final verdict will fix the status of the parties under the direction of the court. Total divorces may be granted on the following grounds: 1. For marriage by persons within prohibited degrees of consanguinity or affinity. 2. For mental incapacity at time of marriage. 3. Impotency at time of marriage. 4. Force, menaces, duress, and fraud in obtaining the marriage. 5. Pregnancy of the wife at time of marriage, unknown to the husband. 6. Adultery in either party after marriage. 7. Willful and continued desertion for three years by either party. 8. Conviction of either party for an offense involving moral turpitude, under which he or she is sentenced to a term in the penitentiary for a term of two years or longer. 9. Cruel treatment or habitual intoxication by either party. In cases under this ninth division a jury may grant a total or partial divorce, in their discretion. A residence of twelve months in this State is necessary to entitle a party to maintain a suit for divorce.

Dower. In this State the wife is entitled to an estate for life in all lands of which the husband dies seized or possessed at the time of his death, or to which the husband obtained title in right of his wife. There is no necessity for renunciation of dower in this State, and a married woman, on that question, need not join with her husband in conveying land, except in cases where, before 1866, he obtained real estate belonging to his wife, by virtue of the marital relation. Dower may be barred by a provision made prior to marriage and accepted by the wife, by deed or will expressed in lieu of dower and accepted by the wife, or by election of the widow to take a child's part in lieu of dower, by failure to apply for dower, within seven years after the husband's death, by joining in a deed with the husband to lands, the title of which came through her.

Executions must follow the judgments or decrees from which they issue. They are good for seven years, and may be renewed for any like period by an entry of nulla bona. To affect property in counties other than that where the defendant resides they must be entered of record in the office of the clerk of the superior court in such counties.

Exemptions and Homesteads. Under the constitution and laws of Georgia, each head of a family, or guardian, or trustee of a family of minor children, or of aged or infirm person, or a person having care and support of dependent females of any age, who is not the head of a family, shall have exemption on realty, or personalty, or both, to the aggregate of of $1,600. The homestead, to be available, must be set aside by the ordinary of the county in which the debtor resides, upon written application, or petition therefor, and upon notice to creditors. This exemption of homestead, together with improvements made thereon after the setting aside of the same as a homestead, is exempt from levy and sale, except for taxes, for the purchase money of the same, for labor done thereon, for material furnished therefor, or for removal of encumbrances thereon. The debtor shall have power to waive, or renounce, in writing, his right to the benefit of exemption above stated, except as to wearing apparel and not exceeding $300 worth of household and kitchen furniture, and provisions. The homestead or exemption may be sold by the debtor and his wife, if any, with the sanction of the judge of the superior court of the county where the debtor resides, or the land is situated. The proceeds to be re-invested upon the same uses. A general waiver, in writing, of the homestead, or exemption, is good.

Fraud. Contracts, awards, marriages, judgments, sales, and wills are void when they are brought about and procured by fraud. Promissory notes when procured by fraud are void in the hands of the holder, who so procures them. The statute of frauds, as of force in Georgia, requires the following obligations to be in writing, signed by the party, or his authorized agent, to be binding: 1. A promise by an executor, administrator, guardian, or trustee, to answer in damages out of his own estate. 2. A promise to answer for the debt, default, or miscarriage of another. 3. An agreement made upon consideration of marriage, except marriage articles as otherwise provided. 4. Any contract for the sale of lands, or any interest in or concerning them. 5. Any agreement that is not to be performed in a year. 6. A promise to revive a debt barred by statute of limitations. 7. Any contract for the sale of goods, wares, and merchandise, in existence or not in esse, to the amount of $50 or more, except the buyer shall accept part of the goods sold and actually receive the same or give something in earnest to bind the bargain or in part payment. 8. An acceptance of a bill of exchange.

Garnishment. This process may be invoked in any case. After an attachment has issued, or after a suit has been filed, or judgment obtained, the plaintiff, his agent, or attorney, may make affidavit that he has reason to apprehend the loss of his debt, and upon giving bond in double the sum claimed to be due, conditioned to answer any damages the defendant may sustain in case he shall fail to recover, or in case the funds were not subject to garnishment, the process will issue. The bond having been given any number of summons may issue. Garnishment may be dissolved by giving bond, and a third party may claim a fund held up under garnishment and may release the fund by giving bond. Wages of day laborers, journeymen, and mechanics are exempt from process of garnishment.

Holidays. (*See Bills of Lading and Promissory Notes.*)

Husband and Wife. (*See Divorces, Married Women, Exemption, Dower, and Administration of Estates.*)

Insolvent Traders, Persons and Corporations.—Any insolvent traders, persons or corporations, engaged in business, who are insolvent, and who have failed or refused to pay unsecured claims on demand, may, on the petition of one or more creditors holding claims in amount equal to one-third of all unsecured claims, have a receiver appointed, and the assets administered under a creditors' bill.

Interest. The legal rate of interest in Georgia is 7 per cent, but 8 is legal when contracted for in writing. Parties charging usury forfeit the excess if usury is set up. And usury will render a deed void, and will in a contract or mortgage render a waiver of homestead, or contract to pay attorneys' fees, void.

Judgments create liens from their rendition upon the real or personal property of the defendant; all judgments at the same term rank equally, and property sold by a debtor after judgment is obtained against him is only discharged from the lien of such judgment, if real estate, after four years' possession by the vendee, and in cases of personal property, after two years'. Judgments, whether in the United States court, or in any State court, obtained in any other county than that in which the defendant resides have no lien on the property of the defendant in any other county, unless the execution thereon is recorded within thirty days, in the county where the property lies. (*See Actions.*)

Limitations. Suits on open accounts are barred after four years, on promissory notes and bills after six years, on instruments under seal after twenty years, on suits for personal injury after two years. Seven years' adverse possession of real estate under color of title, and twenty years' and verse possession without color of title, will bar the claims of all persons not laboring under disability. Infants have seven years to assert their rights, after becoming twenty-one years of age.

Married Women. The wife may contract and sue and be sued in her own name in respect to her separate estate as a *femme sole*, except that she can not bind her separate estate by suretyship for her husband, and any promise to pay her husband's debt is void. She cannot sell to her husband or trustee for any purpose, except by order of the superior court. A wife or her heirs may sue and recover from any person money or property used by her husband to pay his debt where the creditor takes with notice. All the property of the wife at the time of marriage, and all she may acquire by gift, inheritance, or purchase, shall vest in and belong to her, and shall not be liable for the debt, default, or contract of her husband. The wife with her children, if any, is entitled to twelve months' support out of the estate of her deceased husband. The husband is bound to support and maintain the wife, and his consent is presumed to her agency in the purchase of necessaries. The wife's separate property is not liable for debts contracted by her as agent of her husband in the ordinary support of herself and children, but by special contract in her own capacity, and not as agent for her husband, she could bind her separate estate, for that purpose. A married woman can dispose of her property by will.

Mortgages. Mortgages pass no title, and are only security for debts. They may embrace real or personal property in the mortgagor's possession, or to which he has a right of possession. They may cover a stock of goods in bulk, but changing in specifics, and by the act of December, 1869, may cover after acquired property. No particular form is necessary to constitute a mortgage, whether on real or personal property, but it must be clear that the instrument indicates a lien, describes the property upon which it is to operate, and specifies the debt it secures. Mortgages on land are not good against dower, and a wife cannot waive her dower as against this lien. Mortgages must be executed and attested in the same manner as deeds, except that in mortgages on personal property, only the official witness is necessary. Mortgages with powers of sale are valid in Georgia. Chattel mortgages are foreclosed by affidavit, and execution will issue at once, by the clerk of the superior courts. An affidavit to foreclose a mortgage must have the original mortgage, or a copy thereof, annexed thereto, and the affidavit must state the amount of principal, and interest due, and that the mortgagor resides in the county where foreclosed, if residing in this State, or if not, then in the county where he resided at the date of the mortgage. Where the debt does not exceed $100 affidavit may be made and execution may be issued by a justice of the peace. Mortgages upon realty are foreclosed in superior courts of the county where the land lies upon a rule nisi directing the principal, interest, and cost, to be paid into the court on, or before, the first day of the next term. This rule is published once a month for four months, or served on the mortgagee, or his agent, or attorney, three months previous to said first day of the next term. If no valid defense is set up the rule is then made absolute and judgment rendered. The property must be sold by the sheriff at public sale after advertisement once a week, for four weeks. Homestead and exemption may be waived in the mortgage, otherwise a homestead may be taken out of the proceeds of such a sale. Personal property may be sold, and title retained in the seller, until the purchase price is paid. But to be valid as against third parties the contract must be in writing, executed, and attested and recorded in the same manner as chattel mortgages. All mortgages on personal property or real estate must be recorded in the office of the clerk of the superior court to be good against third parties, and bona fide purchasers without notice. No time is named for recording mortgages or deeds, but they should be recorded at once to be good, except as between the parties.

Notes and Bills of Exchange. (*See Bills of Lading and Promissory Notes.*) Promissory notes are negotiable by endorsement of payee, or holder, notes payable to bearer are transferable by delivery only. Bonds, specialties, contracts, bills of lading, and warehouse receipts, are negotiable by endorsement or written assignment in the same manner as bills of exchange and promissory notes. Endorsements may be limited by express restrictions. Acceptances of bills must be in writing. Transferers of negotiable instruments warrant that they are the lawful holders, have the right to sell, and that the instrument is genuine. Bona fide purchasers of negotiable paper taking the same for value before due, and without notice, are protected against any defense, except: 1. Non est factum. 2. Gambling, or immoral or illegal consideration. 3. Fraud in its procurement by the holder. Maturity gives notice of dishonor. No days of grace are allowed on sight papers, all others are entitled thereto.

Protests. (*See Bills of Lading and Promissory Notes.*)

Replevy. All property seized under attachment, distress, or other similar process, may be replevied. Property seized under process and claimed by the third party may be delivered over upon bond and security for its forthcoming to answer final judgment of decree.

Taxes. Taxes are a lien upon all the property of the debtor, real or personal, and its lien is preferred as stated in section herein relating to distribution of the estates. Sales of property for taxes are conducted in the same manner as other judicial sales. One year in which to redeem is allowed.

Usury. (*See Deeds, Mortgages, and Interest.*)

Wills. All persons of full age and sound and disposing memory, including married women, may make wills, and dispose of their estates. Wills must be executed in the presence of three witnesses, all of whom shall be present, must be called by the testator as witnesses, and must sign, and shall certify that they signed, in the presence of the testator, and in the presence of each other. Wills must be in writing, except nuncupative wills. Wills of citizens of other States, where executed according to the laws of the State, and probated in solemn form in such State, which dispose of real or personal property in Georgia, may be admitted to probate in this State, when an authenticated copy of the will is presented, accompanied by a certificate of the governor of such State, under the seal of the State, that the official of the court where such probate was made, had original jurisdiction of the subject-matter. Wills are probated in the court of ordinary in the county where the testator resides at the date of his death. All wills executed out of this state by citizens of this state are foreign wills, and to dispose of property in Georgia must be executed according to our law.

SYNOPSIS OF THE LAWS OF IDAHO

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by J. H. Richards, Esq., Attorney at Law, Boise City. (*See Card in Attorneys' List.*)

Accounts. No proof of account required in the first instance in order to commence suit. On trial the claim must be sustained by the testimony of competent witnesses given orally, or by deposition taken under statutory regulation. Upon default verified account will support judgment.

Acknowledgments. All conveyances and other instruments required to be acknowledged in this State must be acknowledged, if within the State, before a judge or clerk of a court of record, a county recorder, a notary public, or a justice of the peace. If without the State, but within the United States, they must be acknowledged before any such officer, or a commissioner of deeds for this State, or before any officer authorized by the laws of this State or Territory to take such acknowledgment. If without the United States, they must be acknowledged before a minister or charge d'affairs of the United States, resident and accredited in the country where the acknowledgment is taken, before a consul or vice-consul, a judge of a court of record, a duly appointed commissioner, or a notary public. The certificate of acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate, under the hand and seal of the recorder of the county in which the justice resides, setting forth that such justice, at the time of taking such acknowledgment, was authorized to take the same, and that the recorder is acquainted with his handwriting, and believes that the signature is genuine. Proof of the execution of an instrument may be made though it has not been acknowledged.

Administration of Decedent's Estate. Wills must be proved and letters testamentary or of administration granted: In county where decedent was resident at the time of his death; in county in which decedent may have died, leaving estate therein, he not being a resident of State; in county in which any part of estate may be, decedent having died out of State and not resident thereof at the time of his death; in county in which any part of estate may be, decedent not being resident of State and not leaving estate in county in which he died; in all other cases, in county where application for letters is first made. Letters to administration upon estate of an intestate are granted in following order: To surviving husband, or wife, or some other competent person whom he or she may appoint; children; father or mother; brothers; sisters. grand children; next of kin entitled to share in distribution of estate; any kin; public administrator; creditors; any person legally competent. Before letters of administration are granted, administrator must execute a bond to State, with two or more sufficient sureties, approved by probate judge, in double value of personal property and annual rents and profits of real estate, conditioned for faithful discharge of his duties. An inventory and appraisal of estate shall be made and filed by executor, or administrator, after valued by appraisers appointed by court. Executors and administrators, immediately after appointment, must publish notice for claims in newspapers designated by court. Time expressed in notice must be ten months from its first publication, when estate exceeds $1,500; four months when it does not. Claims arising upon a contract, whether same be due, not due, or contingent, must be presented in time limited in notice, and claim not so presented is barred forever, provided, that when it appears to satisfaction of court claimant had not notice, it may be represented at any time before decree of distribution entered. All claims must be sworn to and must be allowed or rejected by executor or administrator. When claim is rejected, either by executor, administrator, or probate judge, suit must be brought within three months after date of its rejection, or within two months after it becomes due, otherwise claim forever barred. Executor or administrator may refer doubtful claims to some disinterested person approved by probate judge. At third term of court after his appointment, and thereafter at any time when required by court, executor or administrator shall account. Debts of intestate must be paid in following order: 1. Funeral expenses. 2. Expenses of last sickness. 3. Debts having preference by laws of United States. 4. Judgments rendered against decedent in his lifetime, and mortgages in order of their date. Property of estate succeeds as follows, in absence of will and after debts are paid: 1. If decedent leaves surviving husband or wife, and one child or its issue, in equal shares to wife or husband and child, or its issue. If husband and wife and more than one child living, or one child living and lawful issue of one or more, one-third to husband and wife and remainder in equal shares to children. Issue of children take their share. If no husband or wife survive, whole estate goes to issue. 2. If there be no issue, estate goes one-half to husband or wife and one-half to father or mother, survivor taking share of other. If there be no father or mother, one-half then goes to brother or sister and to their children, if either be dead, by right of representation. If there be no issue, husband, or wife, estate goes to father and mother equally or to survivor. 3. If there be no issue, husband, wife, father, or mother, then estate goes to brothers and sisters equally or to their issue. 4. If there be husband or wife, but no issue, father, mother, brother, or sister, whole estate goes to husband or wife. 5. If there be neither issue, husband, wife, father, mother, brother, or sister, estate goes to next of kin.

Affidavits are used only to verify pleadings, to prove service of summons, notice, or other paper, to obtain provisional remedy.

Aliens can not take, hold, or acquire real property, except mineral lands, except in the enforcement of a lien or by inheritance.

Assignments and Insolvency. An insolvent debtor may be discharged of his debts by executing an assignment of all his property, real and personal, which, with a sworn inventory of property and schedule of creditors, must be filed in the district court. At a creditors' meeting, held after thirty days' notice given, one or more assignees, not exceeding three, are appointed, and claims proved. Court will set aside property exempt, and issue order for direct payment of money, where no mortgage or pledge had been given, or where such security, if given, has been rendered negatory by act of defendant. Plaintiff must furnish bond, with two sufficient sureties.

Attachments. The plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached

as security for the satisfaction of any judgment that may be recorded, unless the defendant give security to pay such judgment, in the following cases: 1. In an action upon a judgment, or upon contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property. 2. In an action upon a judgment, or upon contract, express or implied, against a defendant not residing in this State. Debt must be due to support attachment. Garnishment process may issue in aid of attachment or execution and the garnishee must make answer under oath. Defendant in a civil action for recovery of money or damages, under a contract, express or implied, may be arrested, when about to depart from the Territory with intent to defraud, or when the debt or obligation was fraudulently contracted. Before issuing the writ the clerk must require a written undertaking, on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking; and two days after issuing such writ, and delivering it to the proper officer, the clerk must post at the front door of the court house and cause to be published in some newspaper published in the county, if there be one, a notice setting out the title of the cause and the fact that an attachment has been issued against the property of the defendant. Such notice shall be kept posted at least ten days, and shall be published, if a weekly paper, in three issues thereof, and if any other than a weekly paper in at least six issues. Any creditor of the defendant, who within sixty days after the first posting and publication of such notice, shall commence and prosecute to final judgment his action for his claim against the defendant shall share pro rata with the attaching creditor in the proceeds of the defendant's property where there is not sufficient to pay all judgments in full against him.

Banks. There is no State banking law. Any person, corporation, or association can engage in banking, and their liability is not affected by reason of the business being that of banking.

Bills of Lading. No statutory provisions governing the same.

Collaterals. No statutory regulation.

Contracts. All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. A written instrument is presumptive evidence of a consideration. All contracts may be oral, except such as are specially required by statute to be in writing. All distinctions between sealed and unsealed instruments are abolished. Where a contract is partly written and partly printed, the written part controls the printed part.

Conveyances. Real estate is conveyed by instrument in writing, signed by the party or his authorized agent in writing. Real estate of a married person, or community property, occupied as a residence, can be conveyed by both husband and wife joining in the execution, and acknowledged by the wife upon an examination *separate and apart from her husband*. Separate property of wife can only be conveyed by instrument in writing, signed by both husband and wife, and acknowledged as above stated. Separate property of husband, and community property, other than above stated, can be conveyed by instrument in writing, signed by husband. If husband has not been bona fide resident of the State, within one year preceding conveyance, married woman may convey separate real property by instrument in writing, executed by her and acknowledged in manner above stated. Power of Attorney of a married woman, authorizing transfer of her separate real property has no validity for that purpose, until acknowledged by her in the manner above stated, and her husband, if a resident of the State, joined in the execution. An instrument purporting to grant real property to take effect upon conditions precedent, does not pass the estate upon the performance of the condition; such instrument is merely an executory contract.

Corporations. All foreign corporations must, within three months after beginning operations, file with the secretary of State, also with the clerk of the district court, in the county where the principal office is located, a designation of some agent upon whom process can be served. *Penalty.* The denial to the corporation of the benefit of the statutes, limiting the time of the commencement of civil actions. Private corporation may be formed by five or more persons, one of whom must be a bona fide resident of this State. Such corporation is formed by executing articles of incorporation, containing the name of the corporation; the purposes for which formed; the place where its principal place of business is to be located; the term for which it is to exist (not exceeding fifty years); the number of its directors; the names and residents of those appointed for the first year; the amount of capital stock, and the number of shares into which it is divided, and the amount actually subscribed and by whom. Railroad, wagon road, and telegraph corporations must also state in articles, the kind of road or telegraph intended to be constructed; the place from and to which it is intended to be run, with all intermediate branches; the latter corporation must have subscribed before filing articles, $1,000 per mile for railroads; $100 per mile for telegraph lines, and $300 per mile for wagon roads; which articles must be verified by affidavit of president, secretary, or treasurer, named in articles, that such capital has been subscribed; articles to be filed in office of county recorder in which principal place of business is located, a copy thereof, certified by recorder, filed with the Secretary of State.

Courts. *Terms and Jurisdiction.* The judge of the district court of each of the judicial districts of the State must annually fix the time for holding the district court in the several counties of his district by an order filed and entered by the clerk in each county of his district and said order must be published two consecutive weeks in a newspaper published in his district; and he may hold such special terms as he deems proper and necessary, by an order published in the newspaper in the county where he is to hold such special term, two consecutive weeks, and have original jurisdiction in all civil cases involving over $100. Probate courts are held in each county once a month, and have concurrent jurisdiction up to $500, and concurrent jurisdiction with justice's courts in all cases. Justice's jurisdiction, $300.

Days of Grace. Abolished by the statute.

Depositions may be taken before any judge, justice of the peace, notary public, or United States commissioner, or any other person agreed upon by the parties, upon notice served upon the opposite party, stating the court, action, time, and place, and before whom the same will be taken, or they may be taken upon commission issued by the judge with interrogatories attached.

Employers and Employes. All persons employing mechanics or laborers in working mines, erecting or repairing buildings, constructing canals, railroads, etc., must make, record, and publish a statement, under oath, setting forth the following: The name of the owner of the premises where work is being done or upon which it is intended to begin work; the name of the person or company engaged in or who contemplates engaging in work upon such premises; the conditions under which such person or corporation is prosecuting the work as agent, owner, etc.; the principal office of the owner and the agent in this State; the time and place where payment of laborers and mechanics will be made. A copy of this statement must be posted at the place where work is prosecuted.

Executions issue at any time within five years after judgment. The only stay is by appeal, with secured bond. One year allowed for redemption.

Exemptions. Homestead, not exceeding $5,000, if duly acknowledged and recorded; office furniture and library, $200; necessary household and kitchen furniture, and provisions for family for six months; certain farm animals, etc., with food for six months; and water right for 100 inches, when actually used in irrigation; also crops growing or grown on fifty acres of land, leased, owned or possessed by the person cultivating the same; tools or implements of mechanic necessary for his trade of the value of $500; all instruments of surgeons, etc.; also all profession libraries; miner's dwelling of value of $500, and his pipes, cars, etc., of the value of $200; pack animals and equipments, not exceeding $250; team, wagon, etc., of drayman; the personal earnings of a debtor within thirty days preceding levy, where earnings are necessary for use of family, residing in this State; the shares held by parties of the Building & Loan Association to the value of $1,000: provided, such person has no homestead; all benefits arising out of life insurance, represented by an annual premium of $250; all property of Fire Companies. All the above property may be sold under foreclosure of mortgage, which includes same.

Holidays. Legal holidays constitute every Sunday, 1st day of January, 22d of February, 4th of July, 25th of December, every day on which a general election is held, every day appointed by the President, or by the Governor for public fast, thanksgiving, or holiday. The time in which any act provided by law to be done, is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is always excluded. Any act, appointed by law, or contract, to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day.

Interest. Where there is no express contract in writing fixing a definite rate of interest, the rate is 7 per cent per annum. Parties may agree in writing for interest at the rate of 12 per cent per annum. Judgments bear interest at the rate of 7 per cent per annum.

Judgments are liens on all real estate of debtor within the county, from time of docketing, and may be extended to other counties by filing transcript in recorder's office. Lien continues two years. Justice's court judgments become liens when certified and recorded. May be revived by issuing execution within limitation.

Limitation to Suits. Contracts not in writing, four years; instruments in writing, five years; judgments and decrees, six years. Revivor: Only by instrument in writing; part payment does not.

Married Women. All property, real or personal, acquired before marriage and acquired after marriage, by gift, bequest, devise, or descent, wife's separate property; all other property acquired after marriage, common property; wife must record inventory of separate property. No estate as tenant by curtesy allowed the husband, nor dower to the wife. Half the common property goes to the surviving husband or wife; if no descendants, half of common property subject to will of deceased, or, in case no will, goes to heirs of deceased. Acknowledgments of married women must be taken separate and apart from her husband and the officer must certify to such separate examination, and that she was made acquainted with the contents of the instrument, and thereupon that she acknowledged to the officer that she executed the same and that she does not wish to retract the same. And no estate in real property of a married woman passes by any grant or conveyance purporting to be executed or acknowledged by her unless the grant is acknowledged as above.

Mortgages. A real estate mortgage must be acknowledged and certified, and recorded in like manner as conveyances and deeds of real property, and is foreclosed by action in the district court. *Chattel Mortgages* must be acknowledged as real estate mortgages, and sworn to by the mortgagor that the same is made in good faith without any design to hinder, delay, or defraud creditors. May be filed or recorded. Survives as long as the debt. Mortgages are discharged by a satisfaction duly executed and recorded, or by entry on margin of this record, witnessed by Recorder.

Notes and Bills of Exchange. Commercial paper is the same as defined by the common law. There must be a payee and payor, and must be paid in money. Place of payment, if no place designated in the instrument, is where it was made, and becomes commercial or negotiable by being executed and delivered, and is made negotiable by indorsement, what is called "in blank." Damages for protested bills: Domestic, 15 per cent; foreign, 30 per cent. Notes or bills becoming due on any holiday, to-wit: New Year's day, 22d of February, 4th of July, Thanksgiving, and Christmas day, or on Sunday, would be payable the day previous.

Seals. The distinctions between sealed and unsealed instruments are abolished.

Security for Costs. Security for costs may be required.

Suits. Civil practice is under a code similar to that of California (which see).

Supplementary Proceeding. When execution has been returned unsatisfied, judgment creditor is entitled to an order from the judge of the court, requiring judgment debtor to appear and answer, upon oath, concerning his property.

Taxes. The locus of property for taxation relates to the second Monday of April, if within the State, and if not to the day of assessment, and is a lien from and after that date. The period of redemption is two years.

Wills. Every person over the age of eighteen years, and of sound mind, may make a will. Every will, other than a nuncupative will, must be in writing, and every will other than an olographic and a nuncupative will, must be executed by the testator subscribing thereto or some person by his direction, which must be done in the presence of two attesting witnesses, each of whom must sign his name and state that the testator requested him to witness the testator's signature, and the testator must also declare in the presence of the witnesses that such is his last will and testament.

SYNOPSIS OF THE LAWS OF ILLINOIS

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. CRATTY, JARVIS & CLEVELAND, Attorneys at Law, Chicago. (*See Card in Attorneys' List.*)

Account. An action of account may be brought by one joint tenant, tenant in common or co-parcener, against the others; by an executor or administrator against co-executor or co-administrator with will annexed; by a residuary legatee against executors and administrators; by and against executors and administrators in all cases in which the same might have been maintained by and against their testator or intestate; by a co-partner against other co-partners, to adjust co-partnership accounts, and on book account.

Acknowledgments of instruments relating to real estate, may be before one of the following officers: 1. When acknowledged within this State, before a master in chancery, notary public, commissioner, circuit or county clerk, justice of the peace, any court of record or judge, justice, or clerk of any such court. When made before a justice of the peace outside the county, he shall add the certificate of the county clerk that he was such justice at the time. 2. When made outside this State, may be before a justice of the peace, notary public, United States commissioner, commissioner of deeds, mayor of city, clerk of county, judge, justice or clerk of United States court. 3. When made outside the United States, may be before any court of any republic, State, kingdom, or empire, having a seal; or any mayor or chief officer of any city or town having a seal, or any minister or secretary of legation or United States consul, or any officer authorized to take acknowledgments in such country. Chattel mortgages must be acknowledged before a justice of town where mortgagor resides, or, if there be no acting justice, then before county judge of that county. If mortgagor is non-resident, then before any officer authorized to acknowledge deeds.

Actions. In addition to actions which survive by the Common Law, the following also survive: Actions of replevin; action to recover for injury to the person (except slander and libel); to recover damages for injury to real or personal property; for the detention or conversion of personalty; and action against officers for misfeasance, malfeasance, or nonfeasance, and all actions for fraud or deceit. An action will lie to recover for property destroyed or injured in consequence of any mob or riot of twelve or more persons against a city or county. The Common Law forms of action and pleadings are used, but are in some respects modified by statute. Non-resident plaintiffs must give bonds for costs. Process must be served ten days before the commencement of return term. In justices' courts summons is returnable in not less than five, nor more than fifteen days, and must be served at least three days before the time of trial.

Administration of Estates is had in the county courts, except in some of the larger counties where probate courts are established. Administration shall be granted, first, to the surviving husband or wife or next of kin. After sixty days it may be granted to the public administrator of the proper county, or to any creditor. After the lapse of seventy-five days, it may be granted to any person who the county court may think will best manage the estate; but in counties having a population of 200,000 inhabitants or over, the administration of said estate shall be committed to the public administrator of the proper county. In the meantime, if necessary, an administrator to collect may be appointed. Six weeks' notice must be given for proof of claims. Claims not presented within two years from the date of letters, shall be forever barred, unless the creditor shall find other estate not inventoried or accounted for within that time; saving, however, to infants, persons of unsound mind, persons without the United States in the employment of the United States or of this State, the term of two years to exhibit claims after disabilities removed.

Affidavits may be taken or oaths administered by any judge, master in chancery, clerk of court, justice, police magistrate, or notary public. Any oath authorized or required to be made out of the State, may be administered by any officer authorized by the law of the State where it is administered, and if such officer have a seal, his certificate under his official seal shall be received as *prima facie* evidence of his authority to administer oaths.

Aliens. By statute of July 1, 1897, all aliens may acquire and hold, and convey, or devise, or otherwise alienate real property, subject to certain provisions and restrictions. If said alien be twenty-one years of age or upwards at the time of acquiring title to lands in this State, he may hold title thereto for six years; but if he be under twenty-one years at the time of acquiring said title, he may hold title for six years from and after the time he becomes twenty-one years of age, and if at the end of the time above limited such lands shall not have been conveyed to bona fide purchasers for value, or such alien shall not have become a citizen of the United States, the State's attorney shall compel a sale of said lands, such sale, however, to be made subject to all incumbrances of judgment, mortgage or otherwise existing against said land. The money and securities for the unpaid balance, if any, of the purchase price bid for said land shall, after deducting costs, be delivered to the State treasurer, who shall hold the same as the property of the State of Illinois.

Appeals. Appeals may be taken from justice courts to the circuit, superior, or county courts. Appeal bond must be double amount of judgment. Appeals from probate court to circuit court may be taken upon bond, such as probate court may approve. Such appeals are tried *de novo* in circuit, superior, or county courts. Appellate courts exercise appellate jurisdiction only. If the sum amounts to $1,000 the case may be taken from the appellate to the supreme court on appeal or writ of error. Any case, however, may be taken from the appellate to the supreme court if the appellate court shall certify that questions of law are of sufficient importance to justify doing so.

Arbitration. The parties to any suit pending in any court of record may agree to arbitrate, whereupon an order to that effect will be entered submitting the matter to three arbitrators, each party choosing one, and a third if they can agree; if not, the court will name the third. The arbitrators are sworn to properly hear and decide the cause, may have witnesses subpœnaed, issue attachments, administer oaths, and punish for contempt. The award shall be in writing, signed by them or a majority, and a copy given to each party. Either party may, within one year, by giving four days' notice, have final judgment thereon. The right to submit controversies to arbitration, as at common law, is not affected.

Arrest. One about commencing suit upon any specialty, bill, note, judgment, obligation, or contract may, on affidavit stating facts showing that debt was fraudulently incurred or that debtor has fraudulently concealed or disposed of property, have *capias* issued for his arrest. In actions for damages merely, affidavit shall state that judgment will be in danger of loss unless debtor be held to bail. Plaintiff must give bond in double the amount sued for, and debtor must give bond as fixed by court, or go to jail. He may be discharged if the affidavit be insufficient or untrue. Debtor may schedule out if malice is not the gist of the action. If it is, he may remain in jail, the creditor paying his board, at $4.50 per week, and the debt is satisfied by imprisonment, at the rate of $1.50 per day.

Assignments. The county court has jurisdiction in cases of voluntary assignment for the benefit of creditors, which assignments must be duly acknowledged, filed in the office of the clerk of the county court, and recorded in the county where the assignor resides, or where the business has been carried on, and in the county or counties where land embraced in the assignment is situate. Assignee must file bond and inventory, and send notice by mail to creditors to present claims under oath within three months from publication of notice. Claims not so presented do not participate in dividends until after the payment in full of all claims properly allowed. Assignee is required to make equal dividends among creditors at first term of court after the three months' notice, and to render a final account within one year. If any creditor shall fail to receive his distributive share for a period of six months after final order of distribution, the assignee shall, upon order of court, pay to the county treasurer the total of such undistributed amounts. The creditor who shall not have received his share may, at any time within six months from the time of such payment, receive the same from the treasurer. Should such creditor not procure the same from the treasurer within said six months the debtor may receive of the treasurer whatever sum shall then remain in his hands unpaid to creditors. Preferences are void. Wages of laborer or servant earned within three months must be paid in full. Proceedings may be dismissed out of court by consent of debtor and a majority of creditors, in number and amount, but debtor remains liable for his indebtedness.

Attachment. The writ may issue out of courts of record on claims exceeding $20, when the debtor is non-resident; conceals himself, or stands in defiance, so that process can not be served on him; or has departed from this State with the intention of removing his effects therefrom, or if about to do so; or has, within two years, fraudulently conveyed, assigned, concealed, or disposed of his property, or a part thereof, so as to hinder or delay creditors; or is about fraudulently to conceal, assign, or otherwise dispose of his property or effects, so as to hinder or delay creditors; or the debt was fraudulently contracted by statements in writing. Before writ can issue, plaintiff, his agent, or attorney, must make affidavit to one or more of these facts, and give bond, in double the amount of claim. Writs may issue out of justice's courts, on the same grounds, on claims not exceeding $200. Garnishment process may issue in cases of attachment, or on return of execution unsatisfied, but the wages of any person who is the head of a family and resides with the same, to the amount of $8 per week, are exempt. (*See Garnishment.*)

Banks. There is nothing special in the statutes about National banks, except that shares of stock in such as may be located in this State are listed and taxed as shares in State banks and as other personal property, even though the owner be non-resident. Each bank is required to keep a list of names and residences of its stockholders.

Banking associations may be formed to do general banking, except issuing bills as money; may make loans on personal and real estate security and accept and execute trusts. Capital required is graded: Cities of 5,000 or less, $25,000; up to 10,000, $50,000; up to 50,000, $100,000, and 50,000 or more, $200,000. The State Auditor issues certificate of organization, which must be recorded in proper county. Any impairment of capital must be made good on notice from him.

June 4, 1897, the statute was amended, as follows: "The total liabilities to any association, of any person, or of any company or firm, for money borrowed, including in the liabilities of a company or firm, the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of capital of such association actually paid in. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business papers actually owned by the person negotiating the same, shall not be considered as money borrowed. Every such loan made in violation of the provisions hereof, shall be due and payable according to its terms, and the remedy for the recovery of any money loaned in violation to the provisions hereof, or for the enforcement of any agreement, collateral or otherwise, made in connection with any such loan, shall not be held to be impaired, affected, or prohibited by reason of such violation, but such remedy shall exist notwithstanding the same. But every director of any such association who shall violate, or participate in, or assent to such violation, or who shall permit any of the officers, agents, or servants of the association to violate the provisions hereof, shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation."

Collaterals. There is no special provision relating to them.

Conveyances. A person may convey title to lands, although not in possession, and although the same be in adverse possession. No estate in joint tenancy, except to executors and trustees, is created by deed unless it be expressly so declared, otherwise it will be a tenancy in common. The words "conveys and warrants" are sufficient to convey title in fee simple and to warrant that the grantor was lawfully seized with full right to convey; that the land was free from incumbrance, and that grantee have quiet and peaceable possession, and that grantor shall defend title. The words "conveys and quit claims" are sufficient to convey all the grantor's interest. The words "mortgage and warrant" are sufficient to mortgage the fee with full covenants of general warranty. The homestead right is not waived except apt words be used. A married woman above eighteen joining with husband in any deed, mortgage, power of attorney or other writing, shall be bound in respect to her title the same as if she were single. No covenant or warranty is broken by the existence of a highway upon the land conveyed. (*See Acknowledgment.*)

Corporations. Corporations may be formed under the general incorporation act for any lawful purpose except banking, insurance, real estate, brokerage, railroads, and loaning money; separate acts provide for these. At all meetings of stockholders, each share is entitled to one vote, in person or by proxy. Cumulative voting is allowed. Final certificate of incorporation must be recorded in company's own county. A corporation may hold only real estate necessary for its business. Its

business is controlled by directors—not less than three, nor more than eleven—who shall be liable for corporate debts in excess of amount of capital stock, if assented to by them. Shares may be not less than $10 nor more than $100. No stock liability exists, except for unpaid balances due thereon. A purchaser of stock is liable same as original holder. Stockholder has a right, at all reasonable times, to examine records and books. Certificates may be assigned in blank and passed by delivery. Stock is personalty, and may be taken and sold on execution if certificate has not been sold or pledged in good faith. One holding stock as collateral, or as executor, administrator, conservator, guardian, or trustee, is not personally liable as a stockholder. Every corporation, except building and loan, railroad, banking, and insurance, must report on oath annually between August 15th and September 1st to the Secretary of State the exact location of its principal office and character of business, names of officers and directors, the exact residence of each, and when his term expires. The Secretary of State shall annually furnish to the Recorder of each county a list of above facts, to be filed for public reference. Foreign corporations must file with Secretary of State copy of charter or authenticated certificate, and furnish sworn statement showing the proportion of the capital stock of such corporation which is represented by the property located and business transacted here, and pay such fees and costs as are required of domestic corporations; must maintain a public office or place to transact its business, and keep certain books; must designate some person on whom legal service may be had; be liable to same restrictions as domestic corporations, and have no other or greater powers. It can not pledge or incumber its property in this State to the injury of a resident or citizen creditor. No mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in another State, shall take effect as against a resident creditor whose debt existed when such mortgage was recorded. Such corporation must report on oath promptly to Secretary of State any change in name and address of its representative, any increase and decrease of capital stock, or the proportion thereof represented in this State by its property and business therein. This law does not apply to railroad or telegraph companies with lines already built in this State, nor to insurance, banking, or loaning companies.

Courts. *Terms and Jurisdiction.* Circuit courts have original jurisdiction in all cases in law and equity, and hold two or more terms in each year, in each county. County courts have probate jurisdiction (except in counties where probate courts are established), and have also a limited civil ($1,000) and criminal jurisdiction. Provision is made for city courts of special civil and criminal jurisdiction. Justices of the peace have jurisdiction limited to $300. Appellate courts and a supreme court exercise appellate jurisdiction. Cook county has a special superior court of jurisdiction concurrent with that of circuit courts, and has also a special criminal court, each with monthly terms.

Days of Grace are abolished by statute in force July 1, 1895.

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Descent. Real and personal property of intestates, after payment of debts, shall descend as follows: 1. To children and their descendants; 2. If no child, nor descendant of child, and no widow or surviving husband, then to parents, brothers, and sisters; 3. If there is a widow or surviving husband and no child, or descendants of child, then one-half of the realty and all the personalty to the widow or surviving husband, and the other half as in other cases where there is no child or descendant of such; 4. Where there is a widow or surviving husband, and also a child or descendant of such, the widow or surviving husband shall have one-third of all personalty; 5. If there is no child or descendant of such and no parent, brother, or sister, or descendant of such, and no widow or surviving husband, estate shall descend to next of kin, by the civil law; no representations among collaterals excepting with the descendants of brothers and sisters, and no distinction between kindred of whole and half blood; 6. If there be widow or surviving husband and no kindred, estate descends to widow or surviving husband; 7. If no kindred and no widow or husband surviving, the estate shall escheat to the county where estate or the greater portion thereof is situated. An illegitimate child is heir to its mother and any maternal ancestor and any person from whom its mother could inherit, and the lawful issue of an illegitimate takes its estate. An illegitimate person's estate shall descend to the widow or surviving husband and children as the estate of other persons in like cases. On the death of an illegitimate intestate, leaving no child or descendant of such, the estate shall descend to widow or surviving husband. If no widow or husband and no child or descendant, such estate shall vest in the mother, and her children and their descendants; one-half to the mother. If no heir as above, the estate shall vest in the next of kin to the mother as by the civil law. If no heirs or kindred, the estate shall escheat to the State. An illegitimate child becomes legitimate if the parents inter-marry.

Divorces may be granted for impotency; former wife or husband living; adultery; desertion or habitual drunkenness two years; attempt on the life of the other by poison or other means showing malice; extreme and repeated cruelty, conviction of felony, or other infamous crime. Residence in State one whole year next before filing petition required, unless the offense was committed in this State or whilst one or both resided herein. Suit must be brought in county where complainant resides and process may be directed to any county in the State. If default be made the testimony shall be in open court without a jury. No confession of the defendant shall be evidence unless it was made without fraud or collusion. The court may, pending the cause, prohibit husband from interfering with personal liberty of wife and may make such order concerning the custody and care of minor children as may be for their benefit. Husband may be ordered to pay alimony, pending the suit. Permanent alimony may be decreed to support the wife, which may be altered or modified from time to time. In case the wife obtain a divorce she may have her maiden name restored.

Dower. The estate of courtesy is abolished and the surviving husband or wife is endowed of a third part of lands owned by deceased at any time during marriage. Equitable estates and lands contracted for in lifetime, the title of which may be completed after death, are subject to dower. No dower as against mortgage for purchase money, nor mortgage made before marriage, except as to the surplus remaining after payment of incumbrance. If will makes provision in lieu of dower, the dower will be barred in other lands unless the survivor shall renounce the benefit of such devise within one year after letters in probate are issued. No judgment or decree, nor laches, default, covin, forfeiture or crime of either, nor conveyance without the consent of the other shall bar dower.

Evidence. Parties to actions and interested persons may testify. Persons convicted of crime may testify, but the conviction may be shown to affect credibility. A party shall not testify on his own behalf when the adverse party is trustee, conservator, executor, administrator, heir, legatee, devisee, guardian or trustee, except as to facts occurring after death of deceased person, or after ward, legatee or devisee shall have attained majority, or where agent of deceased person shall testify to conversations or transactions between the parties, or where other witness shall testify to conversation or admission occurring before death in the absence of deceased persons, or where deposition of deceased person, taken in lifetime, shall be read in evidence. Where claim or defence is made on a book account, a party interested may testify that his account book was a book of original entries, that the entries were made by himself, are true and just, or were made by a deceased, disinterested or nonresident person in the usual course of business, and thereupon such account book shall be admitted in evidence. Husband or wife may not testify for or against each other as to any transaction or conversation occurring during marriage, except in cases where the wife would, if unmarried, be plaintiff or defendant, or where the cause of action grows out of a personal wrong or injury done by one to the other, or out of the neglect of the husband to support the wife, or where the litigation be concerning her separate property, or in suits for divorce, or as to amount and value of property in actions against insurance companies and carriers, or in matters where the transaction was had or conducted by the husband as her agent.

Execution may issue immediately after rendition of judgment, and to any county. Executions are liens on personal property from date of delivery of writ to officer. They do not issue on justices' judgments until twenty days, unless oath be made that debt is in danger of being lost; thereafter execution may issue at any time within seven years. Real estate is sold on execution, without appraisement, to the highest bidder; and, if the debtor so elect, his real estate must be exhausted. No stay law. Defendant may redeem within twelve months after the sale. If he fail to redeem, any decree or judgment creditor may redeem during next three months.

Exemptions. To every householder having family, a homestead, value $1,000 is exempt; and such exemption continues to the survivor, after the death of the husband or wife, so long as he or she occupies it, and to the children until the youngest is twenty-one. In addition, is allowed to every person necessary wearing apparel, Bibles, school books, family pictures, and $100 worth of other property selected by debtor. If debtor is the head of a family, and resides with the same, he is allowed $300 worth in addition, to be selected by him. Selection can not be made from money or wages due. Money due from sale of exempt personal property shall be exempt. Of wages there is $8 per week exempt from garnishment to any one who is the head of a family residing with the same. The party bringing suit shall first make demand in writing for the excess of wages above the exemption. No exemption is allowed when the debt is for the wages of laborer or servant. Wages to amount of $50, are preferred in case debtor is closed by legal proceedings.

Fraud. It is criminal fraud to attempt to obtain insurance money wrongfully; to issue, sell, transfer or pledge any false, fraudulent or simulated stock certificate or evidence of shares of any corporation, or for any officer to sign any such certificate; to sell any land after having once sold or agreed in writing to sell the same to another; to convey any real or personal property with intent to defraud and deceive others or to hinder or delay creditors; to willfully certify any false acknowledgment with intent to defraud; to issue any false warehouse receipt or to wrongfully remove or dispose of any property for which a warehouse receipt has been issued; for the mortgagor to dispose in any manner of any property covered by chattel mortgage. Any negotiable instrument procured by fraud or circumvention to be executed is void even in hands of innocent holder.

Frauds and Perjuries. No executor or administrator is liable upon any promise to pay any debt or damage out of his own estate, and no person is liable upon any agreement to answer for the debt, default, or miscarriage of another, or any agreement upon consideration of marriage or any agreement that is not to be performed in one year, unless the agreement is in writing signed by him or by some one authorized. No contract for the sale of lands or any interest therein for a longer term than one year is binding, unless in writing signed by the party or some one authorized by him, in writing, to sign for him. Any gift, conveyance, or transfer of, or charge upon any real or personal estate made with intent to delay or defraud creditors or other persons, and any evidence of debt given, suit commenced, decree or judgment entered, with like intent, shall be void as against such creditors, purchasers, and other persons. All declarations of trust in lands shall be in writing, except resulting trusts or trusts created by implication or operation of law.

Garnishment. Process may issue upon judgment, and in attachment, to hold whatever a third party may owe, or have belonging to debtor. Garnishee can not be held as the maker or endorser of negotiable paper unless same is past due and in debtor's hands at time of service or judgment. Executors and administrators are subject to garnishment, but no judgment can be taken against them until after order of distribution in probate. One having a claim against a resident debtor shall not transfer or send it beyond this State to collect by garnishment out of debtor's wages to deprive him of his exemption, when the garnishee can be served in this State. Non-resident debtors are protected from like proceedings in our courts.

Husband and Wife. If sued together she may defend for her own right, and if either neglect to defend, the other may defend for both. If he desert his family, she may prosecute or defend in his name, and he has the same right if she desert. Neither is liable for debts of the other before or after marriage, nor shall the earnings or property of either, nor the income thereof, be so liable. Neither shall be entitled to recover compensation for labor or services rendered for the other. If either unlawfully retains control of the other's property, before or after marriage, the owner may maintain action therefor the same as if unmarried. If either abandons the other and leaves the State for one year without providing for support of the family, or is imprisoned in the penitentiary, the court, where the

business is controlled by directors—not less than three, nor more than eleven—who shall be liable for corporate debts in excess of amount of capital stock, if assented to by them. Shares may be not less than $10 nor more than $100. No stock liability exists, except for unpaid balances due thereon. A purchaser of stock is liable same as original holder. Stockholder has a right, at all reasonable times, to examine records and books. Certificates may be assigned in blank and passed by delivery. Stock is personalty, and may be taken and sold on execution if certificate has not been sold or pledged in good faith. One holding stock as collateral, or as executor, administrator, conservator, guardian, or trustee, is not personally liable as a stockholder. Every corporation, except building and loan, railroad, banking, and insurance, must report on oath annually between August 15th and September 1st to the Secretary of State the exact location of its principal office and character of business, names of officers and directors, the exact residence of each, and when his term expires. The Secretary of State shall annually furnish to the Recorder of each county a list of above facts, to be filed for public reference. Foreign corporations must file with Secretary of State copy of charter or authenticated certificate, and furnish sworn statement showing the proportion of the capital stock of such corporation which is represented by the property located and business transacted here, and pay such fees and costs as are required of domestic corporations; must maintain a public office or place to transact its business, and keep certain books; must designate some person on whom legal service may be had; be liable to same restrictions as domestic corporations, and have no other or greater powers. It can not pledge or incumber its property in this State to the injury of a resident or citizen creditor. No mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in another State, shall take effect as against a resident creditor whose debt existed when such mortgage was recorded. Such corporation must report on oath promptly to Secretary of State any change in name and address of its representative, any increase and decrease of capital stock, or the proportion thereof represented in this State by its property and business therein. This law does not apply to railroad or telegraph companies with lines already built in this State, nor to insurance, banking, or loaning companies.

Courts. *Terms and Jurisdiction.* Circuit courts have original jurisdiction in all cases in law and equity, and hold two or more terms in each year, in each county. County courts have probate jurisdiction (except in counties where probate courts are established), and have also a limited civil ($1,000) and criminal jurisdiction. Provision is made for city courts of special civil and criminal jurisdiction. Justices of the peace have jurisdiction limited to $300. Appellate courts and a supreme court exercise appellate jurisdiction. Cook county has a special superior court of jurisdiction concurrent with that of circuit courts, and has also a special criminal court, each with monthly terms.

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Husband and Wife. If sued together she may defend for her own right, and if either neglect to defend, the other may defend for both. If he desert his family, she may prosecute or defend in his name, and he has the same right if she desert. Neither is liable for debts of the other before or after marriage, nor shall the earnings or property of either, nor the income thereof, be so liable. Neither shall be entitled to recover compensation for labor or services rendered for the other. If either unlawfully retains control of the other's property, before or after marriage, the owner may maintain action therefor the same as if unmarried. If either abandons the other and leaves the State for one year without providing for support of the family, or is imprisoned in the penitentiary, the court, where the

remaining one resides, may authorize him or her to manage, control, sell, and encumber the property of the other for the support of the family and to pay the other's debts, or to pay debts for the family's support. Either may constitute the other an attorney in fact to dispose of property. Expenses of family and children's education are chargeable upon property of both or either, and they may be sued separately or jointly. If she be deserted or live separate from him without her fault she may sue in equity for separate maintenance. It is a misdemeanor for him to abandon his wife and neglect to provide for her, or abandon his child or children under twelve years of age and willfully neglect or refuse to provide for them; punishment by fine not less than $100 and not more than $500, or imprisonment not less than one or more than twelve months, or both.

Interest. Legal rate, 6 per cent, but agreement in writing may be made for 7 per cent or less. Forfeiture of all interest is penalty for usury. Legal rate is collectible on moneys due on all instruments in writing; on money lent or advanced for use of another; on money due on settlement of account from day of ascertaining balance; on money received to use of another and retained without owner's knowledge; on money withheld by unreasonable and vexatious delay, and on judgments. In computations of time, interest, and discounts upon negotiable instruments, a month is construed to mean a calendar month, and a year to consist of twelve calendar months; and for any number of days less than a month a day is considered a thirtieth part of a month.

Judgments of courts of record are a lien on real estate situated in the county, for seven years, and may be made a lien on real estate in any other county, by filing a transcript thereof in that county. When execution is not issued within one year, it thereafter is no lien; but execution may issue within any time within seven years, and shall become a lien from its delivery to the proper officer. Judgments rendered at the same term or on the same day in vacation are of concurrent lien. Judgment of court of record may be revived by *scire facias* at any time within twenty years. A judgment of a justice of the peace may be made a lien on real estate in any county by filing a transcript thereof in the circuit court. The term "real estate" when used in this statute includes all rights in lands, including estates for life, and for years, and leasehold estates when the unexpired term exceeds five years.

Liens. Mechanics, material men, architects, or superintendents have a lien for work and materials furnished in building, altering, repairing, or ornamenting any building. A sub-contractor has lien. Hotels and boarding houses have a lien upon "baggage and other valuables" of guests or boarders for "accommodations, board, and lodgings, and such extras as are furnished at their request." Stable keepers and persons have a lien upon horses, carriages, and harness for proper charges for keeping. Agisters and persons keeping or pasturing domestic animals have a lien for proper charges.

Limitation of Suits. Action for slander or libel, one year. Damages for injury to person, false imprisonment, malicious prosecution, statutory penalty, abduction, seduction, criminal conversation, two years. Unwritten contracts, express or implied, awards of arbitration, injury to real or personal property to recover personal property, or damages for detention, or conversion thereof, and all civil actions not otherwise provided for, including actions on foreign judgments, five years. Bonds, notes, bills, written leases, and contracts, or other evidences of indebtedness in writing, ten years. If any payment or new promise shall be in writing on any bond, bill, note, lease or contract within or after said period ten years, then limitation extended ten years longer. If cause of action arises out of this State, and by the laws of that State action can not be maintained, no action can be maintained here. Judgment of court of record in this State, and actions for the recovery of lands are barred after twenty years, and the latter in seven years in some cases. If one fraudulently conceals a cause of action against himself, he may be sued within five years after discovery of the fraud. If action is stayed by injunction, such time shall be deducted from the running of the statute.

Limited Partnership. May consist of one or more general partners and one or more special. Special shall contribute specific amount of capital or property at cash value, and be not liable for debts beyond that amount. General partners must transact the business. Certificate must be signed by all, stating name of firm, nature of business, names of partners, amount of special capital contributed, and when firm begins and ends; certificate to be acknowledged and recorded in all counties where firm does business. If certificate is false, all become general partners. Terms must be published in newspaper six weeks. Can not be dissolved except by operation of law, before end of term unless notice of dissolution is recorded and published. Special partners named must not appear in firm name, and suits by or against firm shall be only in name of general partner or partners. Special partner shall not withdraw money, but may receive lawful interest or actual profits accrued if it do not reduce his original amount. He may examine business and advise as to management. Such firm can not, in contemplation of insolvency, confess judgment or otherwise refer any creditor.

Married Women. A married woman may sue, be sued, possess her own earnings, contract, incur liabilities, purchase, sell and hold personalty, and own real estate to some extent, as if unmarried. Husband not liable for her debts or torts, unless where he would be jointly liable if not married. She can not enter partnership without husband's consent unless he has abandoned her, or be incapable of consenting. No transfer of chattels from one to other is valid as against third parties, unless in writing, acknowledged and recorded. Both are liable for family expenses.

Mortgages on real estate are executed same as deeds. Husband and wife must join to bar dower or homestead, except to secure purchase money. Trust deeds and mortgages with power of sale must nevertheless be foreclosed in chancery. No sale allowed under such a power. *Chattel Mortgages* are invalid as to third parties, if given for longer than two years, but may be extended for a further term. Invalid as to third parties if property allowed to remain in possession of mortgagor unless mortgage expressly so provides. On default, mortgagee must take possession at once. As between parties, it is good though not acknowledged or recorded. Both husband and wife must join if property be household goods. Mortgage on necessary household goods, wearing apparel, or mechanics' tools must be foreclosed in court.

Negotiable Instruments. Days of grace are abolished. January 1, February 12 and 22, May 30, July 4, first Monday in September (Labor Day), December 25, and Thanksgiving, are legal holidays, and are treated as Sundays in presenting for payment or acceptance, maturity, protest, and notice. When either day is Sunday then Monday is the holiday. Paper maturing Sunday or holiday, or if two such days come together, matures the following day. If a bill drawn or indorsed in this State, and payable outside the United States, is dishonored and duly protested, the drawer or indorser is liable for interest and 10 per cent damages; if payable (in money) outside the State and within United States, then for interest, and if suit be brought 5 per cent damages.

"SECTION 3. All promissory notes, bonds, due bills, and other instruments in writing, made or to be made, by any person, body politic or corporate, whereby such person promises, or agrees to pay any sum of money or articles of personal property, or acknowledges any sum of money or article of personal property to be due to any other person, shall be taken to be due and payable, and the sum of money or article of personal property therein mentioned, shall by virtue thereof, be due and payable as therein expressed." Such instrument is assignable by endorsement thereon, under the hand of the payee, as bills of exchange are.

"The rights of the lawful holders of promissory notes, payable in money, and the liability of all parties to or upon said notes, shall be the same as that of like parties to inland bills of exchange, according to the custom of merchants. Every assignor of every other note, bill, or other instrument in writing mentioned in Section 3 (above quoted) of this act, shall be liable to the action of the assignee or lawful owner thereof, if such assignee or lawful holder shall have used due diligence by the institution and prosecution of a suit against the maker thereof, for the recovery of the money or property due thereon, or damages in lieu thereof. But if the institution of such a suit would have been unavailing, or the maker had absconded, or resided without, or had left the State when such instrument became due, such assignee or holder may recover against the assignor as if due diligence by suit had been used."

The legal title can be assigned only by indorsement thereon. Suit must be brought in name of holder of legal title. On bills or notes payable in money, suit may be brought against any or all who are severally liable. If only one or more, but not all, are served, judgment may be entered in form against all, but so far only as that it may be enforced against joint property of all, and separate property of those served. Failure or partial failure, or total want of consideration, may be set up in defense to any such instrument not in the hands of a *bona fide* assignee before maturity. "Fraud or circumvention," in obtaining the making thereof, renders it uncollectible even by innocent holder. In computations of time a month is a calendar month, but for less time a day is the thirtieth part of a month.

Power of Attorney. Almost any act which a party may perform may be performed by an attorney in fact. A non-resident corporation may authorize by power of attorney in fact. A non-resident corporation may authorize by power of attorney, any business done here which it could do if resident, and such authority need not be under seal. A scroll by the agent will be treated as the corporate seal of the company. This does not apply to railroad corporations. If land is to be conveyed by an attorney in fact the power of attorney should be under seal.

Probate Law. (*See Administration of Estates.*)

Protest. (*See Notes and Bills of Exchange.*)

Replevin. Goods or chattels wrongfully taken or detained may be replevied by owner or person entitled to possession. In justice court value of property must not exceed $200. Affidavit may be made by the plaintiff or agent, and must state that property has not been taken for any tax, assessment, or fine, nor under any execution or attachment against property of plaintiff, nor on writ of replevin against him. Replevin bond must be double the value of property to be replevied. Property replevied is delivered by officer to plaintiff or his agent. Plaintiff may declare in replevin for property found and in trover for that not found. As to property not found, he shall be entitled to judgment for its value with interest. Plaintiff is entitled to damages for wrongful detention of property. If suit dismissed without trial, suit may be brought on the bond, in which suit merits may be tried.

Taxes for the year are payable after December 1st, and the delinquent list is delivered to county collector about March 10th, following. Delinquent taxes bear interest at 1 per cent per month after May 1st, following. At tax sales, the entire tract is sold to the person "offering to pay the amount due on each tract or lot for the least percentage thereon as penalty." No bid for penalty shall exceed 25 per cent of amount of taxes. *Redemption.* To redeem, there must be paid, if within six months, the amount of tax and penalty; during second six months, the tax and twice the penalty; during third six months, the tax and three times the penalty, and during fourth six months, the tax and four times the penalty. Must also pay all taxes and assessments accruing after sale, and 7 per cent thereon. If not redeemed within two years, purchaser is entitled to tax deed which is sometimes good.

Wills. Last wills may be made by males of twenty-one and females of eighteen. Must be signed personally or by direction of testator in his presence, and attested by at least two witnesses. At probate, two must testify that they saw it signed, or that it was acknowledged by the testator and that he was of sound mind and memory. If witness has removed to parts unknown, be insane, or has died, his hand-writing may be proven. Probating a will is not conclusive, and bill in chancery may be filed within three years to set it aside. Foreign wills admitted to probate in county where testator may have owned lands. Wills made in one state, or copies duly proven from the record may be recorded here. A nuncupative will is good if reduced to writing within twenty days after making thereof, and ten days after testator's death. It requires two witnesses who heard testator pronounce the words, and two others must testify that will was written within said ten days. No letters on such will granted until after sixty days from testator's death.

SYNOPSIS OF THE LAWS OF INDIANA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. CHAMBERS, PICKENS & MOORES, Attorneys at Law, Indianapolis. *(See Card in Attorneys' List.)*

Accounts. Where an itemized bill of particulars, duly sworn to by or on behalf of the plaintiff, is filed with the complaint in an action on account, the correctness of the account will be taken to be admitted, if defendant fail to appear, and judgment rendered without further evidence.

Acknowledgments. All conveyances of real estate, except leases for less than three years, must be in writing, and acknowledged and recorded within forty-five days from their execution. Within the State acknowledgments may be taken before a judge or clerk of a court of record, justice of the peace, auditor, recorder, notary public, or mayor of a city, and in other States and Territories before the like officers, or a commissioner of deeds for Indiana. In any foreign country, before a minister, charge d'affaires or consul of the United States. If such acknowledgment or proof is in some other than the English language, or is not attested by such official seal, it must be accompanied by the certificate of an officer of the United States to the effect that it is duly executed according to the laws of such foreign country, and that the officer has legal authority to certify to the proof or acknowledgment and the meaning of his certificate, if made in a foreign language. Wife must join in deeds to husband's lands in order to carry her inchoate one-third interest in husband's lands. No *separate* acknowledgment of wife necessary in order to convey her inchoate interest in husband's lands, although she must acknowledge.

Actions. The distinctions between law and equity abolished. The statute provides but one form of action. In this, either legal or equitable relief may be had. Upon the filing of a complaint in the office of the clerk of the court, or of a justice of the peace, a summons is issued requiring the defendant to appear and answer to the complaint. Defaults cannot be taken in the higher courts unless the summons shall have been served at least ten days before the day on which it is returnable, while judgment may be taken on default in three days after service before a justice of the peace. The clerk will make summons returnable at next term, provided at least ten days intervene, or at any date fixed by indorsement on the complaint more than ten days from the date of filing. Non-resident plaintiff may be required to give bond for costs. In actions in court for money demands on contracts the losing party must pay the costs, unless the plaintiff recover less than $50, and in such case plaintiff must pay the costs unless his recovery has been reduced below $50 by set-off or counter claim. In all actions for damages solely, not arising out of contract, if plaintiff do not recover $5 damages he shall recover no more costs than damages, except in actions for injuries to character and false imprisonment, and when the title to real estate comes in question.

Administration of Estates. The circuit court has exclusive original jurisdiction in probate matters, and all procedure is prescribed by statute. In cases of intestacy letters are granted in following order: 1. To widow or widower. 2. To the next of kin. 3. To the largest creditor applying and residing in the State. No person applying within twenty days after the death of the intestate, the court or clerk shall issue letters to a competent inhabitant of the county. Letters of administration shall be granted in the county: 1. Where intestate was inhabitant at time of death. 2. Where not being inhabitant of the State he leaves assets or whereto assets shall afterward come. Where an intestate, not being an inhabitant, shall die out of the State, leaving assets in several counties, or assets of such intestate shall, after his death, come into several counties, letters may be granted in any one of the counties in which such assets may be at time of death; and the administration first lawfully granted shall extend to all of the estate of intestate. Letters cannot issue to a married woman without her husband's consent in writing, filed with the clerk. The effect of such consent is to make husband jointly liable with wife. Preference is given to foreign executor of a decedent not an inhabitant of State, if, before letters are granted in this State, it appears that proper letters have been granted in another State, except there be resident creditors, legatees and heirs entitled to distribution, who are inhabitants of the State. No action shall be brought by complaint and summons against any executor or administrator of an estate for the recovery of any claim against the decedent; but the holder thereof, whether the claim be due or not, shall file a succinct and definite statement thereof in the office of the clerk of the court. If claim be founded upon a written instrument the original or a copy must be filed therewith, setting forth all credits to which the estate is entitled, and accompanied by the affidavits of the claimant, his agent, or attorney, that the claim is just and wholly unpaid. If claim be secured by a lien, the lien shall be particularly set forth in such statement and a reference as to where such lien will be found if of record. The claim must be filed within one year from the giving of notice of the administrator's appointment, otherwise the claimant will have to pay all costs; and if not filed at least thirty days before the final settlement of the estate, it shall be barred, except that heirs, devisees and distributees shall be liable to the extent of the property received by them, to any unpaid creditor who six months prior to the final settlement was insane, an infant, or out of the State,—suit to be brought within one year of removal of disability, and if upon claim of non-resident creditor, within two years of the settlement of the estate. If claimant fail to appear and prosecute claim same shall be dismissed and subsequent prosecution of the claim shall be at claimant's costs, unless good cause for such failure be shown.

Affidavits to be used in this State may be taken before a notary public or any other resident officer in this State authorized to administer oaths; or before an ambassador, minister, consul, vice-consul or consular's agent of the United States in a foreign country; or before the judge of a court of record having a seal in such foreign country, the genuineness of his signature, existence of the court, and fact that he is a member thereof, being certified by its clerk under its seal; or in another State before some officer whom the clerk of the circuit or district court, or court of common pleas of the county where such officer exercises the duties of his office shall, under his hand and the seal of his court, certify as duly impowered by the laws of such, to administer oaths and affirmations, and take affidavits—and so certify as a part of the affidavit.

Aliens. Resident aliens who have declared their intention to become citizens, may acquire, hold, and enjoy real estate, and may convey, devise, mortgage, or otherwise encumber the same, in like manner and with the same effect as citizens of this State; others may acquire by descent or devise but must convey within five years or their lands will escheat.

Appeals. Except in a case originating before a justice of the peace, or mayor, or police judge of a city, and not involving the validity of an ordinance passed by an incorporated town or city, and where the amount in controversy, exclusive of interest and costs, is less than $50, an appeal from any final judgment or order of a circuit or superior court may be taken within one year after the rendition thereof either to the supreme or the appellate court, according as the matter falls within the jurisdiction of the one or the other court. From the judgment of a justice of the peace or mayor of a city an appeal may be taken to the circuit or superior court of the county, within thirty days, where the action will be tried anew. *(See Courts.)*

Arbitration. All persons not under disability, may, by agreement in writing, arbitrate any difference between them which might be subject of a lawsuit, except the claim to any estate in fee or for life to any real estate. The parties shall execute bond conditioned to abide and faithfully perform the award, and they must agree to make the submission a rule of court. Ten days' notice in writing must be given to opposite party of time and place for arbitrators to meet. Witnesses may be required to attend. Award of the majority must be in writing. If either party refuse to abide such award, opposite party may file the same, together with agreement of submission, in the court named in such submission. Upon such submission being proved by an attesting witness, and proof of award by the arbitrators or any of them, and upon proof of service of copy of award upon party refusing to abide, the court shall cause entry of submission and award to be made, and grant a rule against adverse party to show cause why judgment shall not be rendered.

Arrest for Debt. Defendant in a civil action may be arrested and held to bail in the amount claimed, at any time before judgment, on affidavit that he is about to leave the State, taking with him property subject to execution, with intent to delay or defraud the plaintiff. Bond is required of plaintiff.

Assignments and Insolvency. Any debtor may make a general assignment of all property in trust for benefit of all bona fide creditors. To be valid this must be by indenture duly signed and acknowledged, and filed with the recorder of the county in which assignor resides within ten days after its execution. Indenture should contain full description of real estate and be accompanied by schedule of personal property, and attested by the assignor's oath that the indenture and schedule contain a full statement of all his property, etc. Trustee makes oath and files bond in circuit court, and files copy of assignment, etc., in office of clerk of that court within fifteen days after execution of indenture. Trustee named failing to act, the circuit court may appoint a substitute upon petition. Trustee named by the debtor may be removed by the court on the petition of creditors representing in amount one-half the liabilities of the debtor. The court may, upon petition of any creditor, or the trustee, order an examination of the assignor or any person to whom any part of his property has been transferred within six months previous to the assignment. The trustee to make under oath complete inventory of all property coming to his hands, and file in court within thirty days after entering upon his trust; also, cause same to be appraised by two reputable householders; set off to the assignor, if a resident householder, such property as he may select to the value of $600 and proceed to collect the rights and credits, and to sell the property, after giving thirty days' notice of time and place, at public auction, or at private sale, for cash, or upon credit, not exceeding two years, subject to approval of the court as to such sales. The court in its discretion may continue the business. Dividends are declared pro rata upon all claims allowed by trustee or the court. Trustee's compensation fixed by the court. Debtor is not discharged from his liabilities.

Attachment may issue against the property of a non-resident or foreign corporation, and against any who may have disposed of, or be about to dispose of, property, to cheat, hinder or delay creditors, or against a creditor who conceals himself so that summons can not be served upon him. An affidavit is required, which may be made by the creditor or some one on his behalf, and a bond to answer damages if the proceedings are wrongful or oppressive. Creditors who file under the original attachment, before final judgment, are required to furnish a like affidavit and bond, and all share pro rata in the proceeds of the attached property. The wages of a resident householder, not exceeding one month's wages at any one time, are exempt from garnishment or proceedings supplemental to execution, so long as such person remains in such employment. It is a misdemeanor to send claims out of the State to be collected by proceedings in attachment, garnishment, or the like, when creditor, debtor, and person owing for earnings intended to be reached are all within the jurisdiction of the courts of this State and the collection of claims so sent may be enjoined. Courts are prohibited from taking jurisdiction of such proceedings to reach wages, when plaintiff and principal defendant are non-residents.

Banks, Savings. The investment of deposits in savings banks in this State is limited by law to: 1. Stocks, or bonds or treasury notes of the United States. 2. Stocks or bonds of this State. 3. Orders or bonds of any county, city or town in this State issued pursuant to the authority of law. 4. Stocks or bonds of any State in the Union that has, for ten years previous to such investment *being made, regularly paid* the interest on its legal bonded debt in lawful money of the United States. 5. Bonds or notes secured by mortgage on unincumbered real estate, situate in the county where the bank is located or an adjoining county, or in any other county in the State of Indiana, worth, exclusive of perishable improvements, at least twice the amount loaned thereon. 6. Promissory notes or bills of exchange, before their maturity, payable at some chartered bank within the State, and having not to exceed twelve months to run from the date of the loan or purchase, made or indorsed by two or more responsible freeholders of the State; but no such note or bill to exceed $10,000; no more than $10,000 to be loaned upon the same security; every such note or bill to be made or indorsed by at least one freeholder of the county in which the bank is located, by dealing in exchange, by purchasing and selling sight or time drafts payable out of the State; no draft to be purchased unless made or indorsed by one or more responsible freeholders of the county in which the bank is located, or an adjoining county, and unless for a sum not in excess of $10,000, and maturing within sixty days or less time, when payable out of the State; not more than one draft to be held by bank at any one time, which is secured by the same, or any of the same indorsers, but not to exceed 60 per cent of the whole amount of deposit shall be so loaned on interest.

A separate statute provides for the organization and regulation of savings banks. Any number of persons from seven to twenty-one, each of whom shall have been resident citizens of the county for at least

five years preceding the organization, and owners of unincumbered real estate of the value of $5,000, exclusive of improvements, may organize by the execution of a certificate setting forth the name of the association, place of its operations, the name, residence, occupation and post office address of each member, and a declaration that each member will accept the responsibility and faithfully discharge the duties of a trustee thereof. The certificate must be duly acknowledged before the judge of the circuit court, and the judge must examine and hear proof of the qualifications of the persons executing the certificate, and satisfy himself that they are in all respects suitable to be entrusted with the management of a savings bank, and certify these facts, which certificate shall thereupon be filed in the office of the recorder of the county and the auditor of state. The statute goes into the minutest details in the regulation of the affairs of banks organized under its provisions. It requires bonds from all officers and agents, and forbids accepting perquisites of any kind, regulates the method of acceptance and repayment of deposits, and provides particularly the nature of investments which shall be made. Savings banks may purchase, hold, and convey real estate for the following purposes, and none other: For the location of banking house; real estate mortgaged to it in good faith for money loaned, or upon which it shall have purchased a mortgage; real estate taken upon judgments and decrees on behalf of the bank, or purchased to prevent loss on claims held by the bank.

Banks, State. The general assembly has enacted a general banking law, governing the organization and operation of State banks. The auditor of the State, with the approbation of the governor, as often as shall be deemed necessary or proper, must appoint a State bank examiner who shall not be a director or other officer of the bank, and shall have power to make a thorough examination into all the affairs of the bank, and, in doing so, to examine any of the officers and agents thereof on oath. The examiner shall make a detailed report of the condition of the bank to the auditor, and the association shall be subject to no other visitorial powers than such as are vested in the several courts of the State. The State banks must make to the auditor of the State not less than five reports each year, according to the form which may be prescribed by him, verified by oath or affirmation of the president, cashier, or other managing agent, which reports must exhibit, in detail, and under appropriate heads, the resources and liabilities at the close of business on any past day to be by him specified, and must transmit such report to the auditor within five days after the receipt of a request or requisition therefor from him. The report so required, in the same form in which it is made to the auditor, must be published in a newspaper published in the place where the bank is established, or, if there is no newspaper in the place, then in one published nearest thereto in the same county or an adjoining county, at the expense of the bank. The auditor has power to call for special reports from any particular bank, whenever, in his judgment, it shall be necessary in order to a full knowledge of its condition. Any bank failing to make and transmit any such report shall be subject to a penalty of $100 for each day, after five days, that it delays to make and transmit the same.

Bills of Exchange and Promissory Notes. Grace is allowed on all bills of exchange payable within the State, whether sight or time bills, except demand bills. Damages for protest on bills upon any person at any place out of this State, but within the United States, 5 per cent; on bills drawn upon any person at any place without the United States, 10 per cent. Promissory notes payable at a bank in this State, and bills of exchange, are governed by the law merchant. Promissory notes not payable at a bank within the state are subject to any setoff maker may have against payee, or any subsequent holder, accruing before notice of assignment. On these, maker must be exhausted before indorser can be sued. Protest is not necessary to hold indorsers of such notes, but to hold them maker must be sued at first term of court after maturity, unless it can be shown that he was insolvent at the time of such maturity. For all purposes of presenting for payment or acceptance, for the maturity and protest, and giving notice for the dishonor of bills of exchange, bank checks, promissory notes, or other negotiable or commercial paper, the first day of the week, commonly called Sunday; January 1st, commonly called New Year's day; July 4th; December 25th, commonly called Christmas day; and any day appointed or recommended by the President of the United States or the Governor of the State of Indiana as a day of public fast or thanksgiving; February 22d, commonly called Washington's birthday, and May 30th, commonly called Memorial day, the first Monday in September, called Labor day, and the day of any general election, are made holidays by statute; and all commercial paper, falling due on either of said holidays, shall be deemed as having matured on the day previous, and when any of said holidays comes on Monday they shall be deemed as having matured on the Saturday previous, and when the legal holiday comes on Sunday the day following shall be the holiday.

Chattel Mortgages. Chattel mortgage on personal property left in the hands of the mortgagor with power to sell must stipulate that the money received by the sale be applied to the payment of the mortgage debt, and should be drawn in the form of an absolute bill of sale; must be acknowledged in the same manner as prescribed for the acknowledgment of deeds, and recorded within ten days from execution, and in the county where the mortgagor resides. An assignment of goods, by way of mortgage, where such goods are not delivered to the mortgagee, shall not be valid against any other person than the parties thereto, unless such mortgage shall be acknowledged, and recorded within ten days after the execution thereof. Where delivery of the chattels to the mortgagee occurs at the time, record is unnecessary. A mortgagee of household goods can not sell mortgaged property except under a judicial proceeding in the circuit or superior court.

Collaterals. No material statutory provisions in regard to collaterals.

Contracts. Contracts made by telegraph between two or more persons are declared to be contracts in writing.

Conveyances. Lands in this State may be taken, held, conveyed, devised, or passed by descent, by or from any citizen of the United States; or by or from any alien who shall be at the time a bona fide resident of the United States, an Indian, a negro, or a mulatto or other person of mixed blood; with some provided exceptions as to descent or devise. Lands which may have come by descent or purchase to the wife of an alien, may be held, conveyed, devised and passed by descent by and from her, notwithstanding the fact of her residence with her husband in a foreign State or country. Insane persons and infants may not convey real estate. Except bona fide leases for a term not exceeding three years, conveyance of lands, or of any interest therein, must be by deed, subscribed, sealed and acknowledged by the grantor or by his attorney duly qualified; that is, by an instrument in writing, subscribed, sealed and acknowledged by his principal in like manner as conveyance is required to be. The joint deed of a husband and wife is sufficient to pass the lands of the wife. Except in cases of mortgages, conveyances in trust, conveyances to husband and wife, and cases of estates vested in executors or trustees, as such, and so held by them in joint tenancy, all conveyances and devises of lands, or of any interest therein, made to two or more persons, shall be construed to create estates in common, and not in joint tenancy, unless it shall be expressed therein that the grantees or devisees shall hold the same in joint tenancy, and to the survivor of them, or it shall manifestly appear from tenor of instrument, that it was intended to create an estate in joint tenancy. A deed of release or quit-claim shall pass all the estate which the grantor could convey by a deed of bargain and sale. The use of the word "heirs" is not necessary to create an estate of inheritance. If it be the intention of the grantor to convey any lesser estate, it must be so expressed in the deed. Liability on lineal and collateral warranties is expressly anolished; a covenant or agreement of any person leaves heirs and devisees answerable theron only to the extent of property descended or devised to them. Any conveyance of land worded—"A. B. conveys and *warrants* to C. D. (here describe the premises) for the sum of (here insert the consideration)," or "A. B. *quit-claims* to C. D. (here describe the premises) for the sum of (here insert the consideration),"—the same being dated, and duly signed and acknowledged by the grantor,—shall, in the one case, be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives that he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof, that the same are free from all incumbrances, and that he will warrant and defend the title of the same against all lawful claims; and shall, in the other case, be deemed to be a good and sufficient conveyance in quit-claim to the grantee, his heirs and assigns. Any mortgage of lands worded—"A. B. *mortgages* and *warrants* to C. D. (here describe the premises) to secure the repayment of (here recite the sum for which the mortgage is granted or the note or other evidences of debt, or a description thereof, sought to be secured, also the date of the repayment)"—the same being dated and duly signed and acknowledged by the grantor—is a sufficient mortgage to the grantee, his heirs, assigns, executors and administrators, with warranty from the grantor and his legal representatives of title perfect and unincumbered in the grantor. When a deed purports to convey absolutely any estate in lands, but is made, or intended to be made, defeasible by force of a deed of defeasance, bond or other instrument for that purpose, the original conveyance shall not thereby be defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded, according to law, within ninety days after the date of said deed. Every conveyance or mortgage of lands, or of any interest therein, and every lease for more than three years, shall be deemed fraudulent and void as against any subsequent purchaser lessee or mortgagee in good faith and for a valuable consideration, unless recorded in the recorder's office of the county where such lands are situated, in forty-five days from its execution. (*See Acknowledgments, Married Women.*)

Corporations. *Domestic Corporations.* Corporations are created only under general statutes. This is done by means of articles of association, executed by the required number of persons, and filed with the secretary of State, recorder or clerk of the county, as provided by statute. The statutory requirements having been complied with, a statement thereof may be filed with the clerk of the circuit court, which at the next term, upon proof of such organization, shall enter of record a declaration thereof, and such order is conclusive of the fact of such existence. The liability of stockholders varies according to the nature of the corporation in question and the law under which it was organized. In the corporations which were in existence November 1, 1851, and accepted the terms of the act of March 6, 1883, stockholders are liable, in case of insolvency, for a sum at least equal to amount of stock held at time the debt was contracted. In most corporations, stockholders who have paid for their stock are not liable for debts of the company. However, there is liability in some cases for labor and services of employes. Shares of capital stock in a private corporation are subject to attachment.

Foreign Corporations. Agents of foreign corporations before entering upon the duties of their agency in this State, shall deposit in the clerk's office of the county where they propose doing business, the power of attorney, commission or appointment, under which they act as agents. Before commencing their duties as such they shall also file a duly authenticated order, resolution or other sufficient authority of the board of directors or managers of such corporations, authorizing citizens or residents of this State having a claim or demand against such corporation arising out of any transaction in this State with such agents to sue for and maintain an action in respect to the same in any court of this State of competent jurisdiction, and further authorizing service of process in such action on such agent to be valid service on such corporation, and that such service shall authorize judgment and all other proceedings against such corporation. Contracts made by such agents shall not be enforced in any court of this State until there has been a compliance by such agents with the above provisions. Failure of a foreign corporation to comply with these provisions will not bar—but will abate—its action. Any person who shall, directly or indirectly, receive or transmit money or property to or for such corporation, or make any contract, or transact any business for or on account of any such corporation, shall be deemed agent. This provision does not apply, however, to persons acting as agents for a special or temporary purpose or for purposes not within the ordinary business, nor does it apply to attorneys at law. Any person acting as agent of a foreign corporation, who shall neglect or refuse to comply with the foregoing provisions, is liable to a fine in any sum not less than $50. In 1879 it was enacted that: Every foreign corporation now doing or transacting, or that shall hereafter do or transact, any business in this State, or acquire any right, title or interest in or lien upon real estate in this State, that shall transfer or cause to be transferred from any court of this State to any court of the United States, save by regular course of appeal after trial in the State courts, any action commenced by or against such corporation in any court of this State by or against any citizen or resident thereof: or that shall commence in any court of the United States in this State, on any contract made in this State, or liability accrued therein, any suit or action against any citizen or resident of the State of Indiana, shall thereby forfeit all right and authority to do or transact business in this State, or hold real property or liens thereon, and all contracts between such corporations and citizens and residents of this State made after the passage of this act shall be rendered void, as in favor of such corporations, but enforceable by such citizen at his election. The provisions of the foregoing section are made conditions upon which such corporations may be authorized to do business, or hold titles to, or liens on, real estate in this State.

Courts. *Terms and Jurisdiction.* The circuit court is the only court of original general civil jurisdiction in the State, it has full probate powers. From three to four terms are held annually in each county.

Superior courts have been established in Marion, Tippecanoe, Allen, Vigo, Madison, Lake, Porter, La Porte, Howard, Grant, and Vanderburg counties, and hold from four to ten terms each year. The jurisdiction of Marion superior court is concurrent with that of the circuit court in all civil cases except probate matters and bastardy, slander and libel; of Tippecanoe superior court is concurrent with the circuit court in all civil cases and in all actions by or against executors and administrators; of Vigo superior court is concurrent with the circuit court in all causes, including actions by or against guardians, executors and administrators, but no jurisdiction in probate matters and in the settlement of decedents' estates. Other superior courts have concurrent jurisdiction with the circuit court except in probate matters, the settlement of decedents' estates, and in actions for slander and libel. Justice's jurisdiction, $200. Party may confess judgment for $300. When a written obligation for money binds more than one party the justice of the peace may issue process to constable of any county in the State where party resides. The supreme court has no original jurisdiction. It is the sole court of last resort in all cases. It sits at Indianapolis.

Days of Grace. (*See Bills of Exchange and Promissory Notes.*)

Depositions. Depositions may be taken anywhere in the United States without a commission, before any judge, justice of the peace, notary public, mayor, or recorder of a city, clerk of a court of record, or commissioner appointed by the court to take depositions. Person taking deposition must not be of kin to either part or interested in the action. When taken outside of the United States they shall be taken pursuant to an order of the court, under a commission, with such reasonable notice of the time and place of taking the same as the court shall require, and they shall be certified and returned by the commissioner in such manner as the court shall direct. Notice of the taking of the deposition should be served upon the adverse party or his attorney, specifying the cause, the court or tribunal of trial, the time and place of taking, and the names of the witnesses. Reasonable time shall be allowed for the attorney so served to communicate with the client, and for travel to the place of taking, excluding the day of service, of the taking, and of intervening Sundays. The deponent shall be first sworn to testify to the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken. He shall then be examined by the party producing him, and then by the adverse party, and then by the officer, if he see cause. The deposition shall be written down by the officer, by the deponent, or by some disinterested person, in the presence and under the direction of the officer, and after the same has been carefully read to or by the deponent, it shall be subscribed by him. The following facts shall be stated in a certificate to be annexed by the officer: 1. That the deponent was sworn according to law. 2. By whom the deposition was written, and if written by deponent or some disinterested person, that it was written in the presence and under the direction of the officer. 3. Whether or not the adverse party attended. 4. The time and place of taking, and the hours between which it was taken. And the officer shall sign and attest the certificate, and seal the same, if he have a seal of office. If he have no seal, his certificate shall be authenticated by the certificate and seal of the clerk or prothonotary of any court of record of the county in which the officer exercises the duties of his office. The officer taking the deposition shall seal the same in a sufficient envelope and himself post, or express, or deliver the same to the clerk of the court in which the action is pending, endorsing on the envelope the names of the parties and of the witnesses whose depositions are enclosed. Adjournments may be had from day to day after the deposition has been begun, and for longer periods, upon written consent of the parties, which written consent must be attached to the deposition. Adjournments should be noted at the place in the deposition when they occur. A narrative form of deposition may be used. A witness identifying a written instrument should attach it to his deposition, making it a part of his answer.

Divorce. Petitioner must have been a bona fide resident of the State for two years previous to filing the complaint, and of the county for six months, and this must be proved by two resident freeholders and householders of the State. An affidavit of the petitioner must accompany the petition stating the length of his residence in the State, the place of such residence, and his occupation. Divorces are granted for the following causes: Adultery, except where petitioner has connived at the offense or condoned it, or has given defendant the same cause for divorce; impotency, existing at time of marriage; abandonment for two years; cruel and inhuman treatment; habitual drunkenness; failure of husband to provide for his family for two years; conviction of an infamous crime subsequent to marriage. Divorce may be granted for a cause arising outside the State. If it appear by affidavit of a disinterested person that the defendant is a non-resident, the plaintiff must make and file his affidavit stating the residence of the defendant, if known, and if unknown, that must be stated. Notice is given to non-residents by publication for three successive weeks in a newspaper published in the county, and if the residence of the defendant is known the clerk shall mail to such defendant a marked copy of newspaper containing such notice. There must be proof in every case or no decree can be rendered. The court makes all provisions for the wife's support and attorney's fees pending the proceedings — also all orders respecting alimony, custody and support of children. Divorces granted on notice of publication merely may be opened at any time as to the care and custody of children, and opened and defended at any time within two years as to the divorce, or alimony, or disposition of property. Persons obtaining a divorce on publication are forbidden to remarry within two years.

Dower. (*See Married Women.*)

Executions may issue at any time within ten years after judgment rendered, and are returnable in 180 days. From a court of record may issue to any county in the State. Are a lien on personal property within the county from the time they are placed in hands of officer. The liens upon personal property attach in the order in which the officer receives them. When levy is upon real estate the dates of the judgments control the right to participate in the proceeds, and they must be applied according to their priority. Personal property taken in execution may be left with execution defendant by the giving to the officer of a delivery bond with sufficient surety. After judgment is rendered, the debtor may, by giving sufficient freehold sureties, have a stay of execution on any sum exceeding $100, for six months. Where the sum is less than $100, the stay is not so long, varying with amount of judgment. Lands sold under execution may be redeemed within one year by the owner, mortgagee or person having a lien thereon, the owner retaining possession during the redemption year and being liable for reasonable rents and profits in case of failure to redeem.

Exemptions. There is no homestead law. Real or personal property up to $600 is exempt where debtor is a resident householder. Resident householder is entitled to exemption as well when in transit with his family and property as when permanently settled. The debtor must file a schedule of all of his property, and select the property claimed, which is then appraised. Contract waiving exemption is void. Pension money in transit to pensioner is exempt, but when received by him and invested in other property is no more so than any other property. One month's wages also exempt if the debtor is still employed.

Fraud. Assignments, in writing or otherwise, of any estate in lands, or of goods, or things in action, charges upon lands, goods, or things in action, and all bonds, contracts, evidences of debt, judgments, decrees, made or suffered with intent to hinder, delay, or defraud creditors or other persons of their lawful damages, forfeitures, debts, or demands, are void as to the persons sought to be defrauded. The question of fraudulent intent is a question of fact.

Frauds—Statute of. The following contracts, if enforceable in court, must be in writing and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized: 1. To charge an executor or administrator, upon any special promise, to answer damages out of his own estate. 2. To charge any person, upon any special promise, to answer for the debt, default, or miscarriage of another. 3. To charge any person, upon any agreement or promise, made in consideration of marriage. 4. Upon any contract for the sale of land (except loan not exceeding the term of three years). 5. Upon any agreement not to be performed within one year from the making thereof.

Garnishment. (*See Attachment.*) Garnishment is a remedy in aid of attachment. Upon any personal action arising out of contract any person may be summoned as a garnishee defendant upon an affidavit made by plaintiff or some one in his behalf that he has good reason to believe that any person named has property of the defendant in his possession or under his control, or that he is indebted to the defendant, or has control or agency of money, property, credits, or effects; that he has any share or interest in the stock of any association or corporation, and all money or property in the hands of the garnishee defendant is bound from the time the summons is served upon him. Resident householders are entitled to an exemption of $600 in garnishment proceedings, as in all other cases. Wages of non-residents, by the latest decision of the Supreme Court, to the amount of $25, and of resident householders to the extent of one month's wages, are exempt from execution so long as the defendant remains in the employ of the garnishee. Indiana claims can not legally be sent or taken out of the State for prosecution, and suits instituted elsewhere in violation of this prohibition may be enjoined and the intervenor be criminally prosecuted.

Holidays. (*See Bills of Exchange and Promissory Notes.*)

Husband and Wife. (*See Married Women.*)

Interest. The legal rate is 6 per cent, but interest may be taken in advance. No agreement to pay a higher rate is valid unless the same be in writing, and in such case it is not lawful to contract for more than 8 per cent per annum. When a greater rate is contracted for, the contract is void as to the usurious interest, and in an action on a contract affected by such usury, whether it be directly or indirectly charged, all excess over 6 per cent is usurious and illegal, and the excess may be recouped by the debtor whenever it has been reserved or paid before the bringing of the suit. Interest on judgments rendered after March 10, 1879, runs from the date of the verdict or finding, at the rate specified in the original contract, not exceeding 6 per cent, and if no contract has been made 6 per cent is allowed. The act applies to all contracts made within the State, although they are to be performed without it, and where contracts made out of this State provide for a higher rate of interest, and are secured by mortgage upon lands within it, such lands are not liable for a higher rate than is allowed by the laws of Indiana.

Judgments of courts of record are a lien upon all real estate of defendant within the county for ten years. Judgment may be obtained at the first term of the court, after process has been served on debtor ten days prior to the first day thereof. Judgment in justice court becomes a lien on real estate of judgment defendant from time of filing a transcript in office of the clerk of circuit court. Judgment taken by default, before justice of the peace, may be set aside upon the filing of an affidavit by the defendant, showing good defense, provided defendant pay all the costs of previous suit. Act of 1893 provides for filing in office of clerk of any circuit court a certified copy of any judgment rendered by the district or circuit court of the United States for district of Indiana.

Limitations to Suits. Actions for injury to person and character, and for statutory penalty or forfeiture, two years; against public officers relating to their official duties, five years; open accounts and contracts not in writing, for use, rents and profits of real estate, injuries to and detention of property, recovery of personal property and relief against frauds, six years; upon promissory notes, bills of exchange and other written contracts for payment of money, ten years; actions not limited by statute, fifteen years; other written contracts, judgments of courts of record and real actions, twenty years. Revivor: part payment or new promise in writing. Except in favor of sureties, the statute of limitation does not run against the State.

Married Women control their real and personal property, however acquired. The husband is liable for the debts of his wife contracted before marriage to the extent of the personal property he may receive from or through her, or derive from sale or rent of her lands, and no further, and her lands are liable for such indebtedness. A married woman may devise her separate estate; may sell and transfer her separate personal property; carry on any business, labor, or service, and receive the earnings accruing therefrom: enter into any contract in regard to her separate personal estate business, labor, or service, and her separate estate, real and personal, be liable therefor, the same as a *femme sole;* and her husband is not liable for such debts, nor for indebtedness created by the wife for improvement of her separate real estate. She can make leases of real estate for terms of three years or less, and execute mortgages to secure purchase money, without husband joining. She is bound by covenants of title in conveyances of her separate real estate. Her deed conveying her real estate, her husband not joining, is absolutely void. She may sue as a femme sole for any damage to her person or character. She is bound in like manner as principal on her official bond. She can not enter into any contract of suretyship, whether as indorser, guarantor, or in any other manner, and such contract, as to her, is wholly void; and therefore a mortgage on her separate property for a debt for which she is mere surety, indorser, or guarantor, is void; but if, as an inducement to her contract, she makes a sworn statement that contract or mortgage is for her own benefit, in respect to her separate estate, she is estopped from alleging her suretyship as against

any one having no knowledge that the contract is one of suretyship. She is entitled to hold as exempt from execution her wearing apparel, articles of personal adornment purchased by herself to the amount of $200 in value, all jewelry, ornaments, books, etc., which may have been given her as presents; and other property to the amount of $800, except as against indebtedness for the purchase money therefor. No tenancy by the curtesy or dower. A widow takes one-third of her deceased husband's real estate in fee, and free from all demands of creditors, where the estate does not exceed $10,000; one-fourth, if under $20,000, and one-fifth, if above that amount. She also takes a child's interest in the personalty where the number of children does not exceed two, and where there are more than two her interest shall not be less than one-third of the whole of personalty after payment of debts, and in all cases takes $500 without accounting, and may occupy the dwelling and forty acres of her husband's land for a year, rent free. But the one-third of her real estate which the widow takes *in fee*, can not, upon her marrying again, be effectively conveyed or mortgaged by her, if there be a child or children, or their descendants, alive by the previous marriage. Real estate which husband and wife hold by title made to them as husband and wife, is held as an estate by entirety; it can not be taken for the debt of either; is not subject to the lien of a judgment against either, except in case of the death of either or upon divorce granted, when the estate is destroyed and becomes subject to levy and sale; and a mortgage thereof by them both for a debt of the husband has no legal validity.

Mortgages. (*See Conveyances.*)

Partition of Land. All costs and necessary expenses, including reasonable counsel fees for plaintiff's counsel, the amount to be determined by the court, awarded and enforced in favor of those entitled to partition against the partitioners, and in such proportions against each and according to equity as the court may determine, having regard to their relative interests in the land or proceeds apportioned.

Power of Attorney must be executed and acknowledged, and (if for the conveyance of real estate, or to affect real estate) recorded, in the same manner that deeds are made.

Probate Law. (*See Administration of Estates.*)

Protest. It is the custom of merchants to fix the liability of any drawer or indorser of a bill of exchange, or indorser of a promissory note, by procuring such bill or note to be regularly protested by a notary public for non-acceptance or non-payment. The statutory damages on such protest are 5 per cent on the principal of a bill of exchange, if drawn or negotiated within this State, upon any person, at any place out of this State, but within the United States, and 10 per cent if upon any person, at any place without the United States.

Replevin. When any personal property is wrongfully taken or unlawfully detained, or, if taken on execution or attachment, is claimed by a third party, the owner or claimant may bring an action for possession thereof. He may claim immediate delivery upon affidavit therefor, whereupon the sheriff takes possession of the property, and if a delivery bond is given on behalf of the defendant within twenty-four hours, the property is returned to him, otherwise the plaintiff may give bond and take the property; failing to do so it is returned to the defendant. The plaintiff has twenty-four hours in which to file bond. Justices of the peace have jurisdiction in replevin suits involving property not worth over $200. Procedure is same before justice of the peace, except that the plaintiff must file bond in all cases.

Suits. (*See Actions.*)

Taxes. State, county, township, municipal, school, and road taxes attach as a lien on real estate on April 1st of each year, and penalties attach on third Monday of same month in the next year. One-half of all taxes may be paid without penalty, if paid before first Monday of May; other half, if paid before first Monday of November. Sales of real estate for taxes are held on the second Monday of February, and all lands on which taxes are delinquent for two years are offered. Owner has two years in which to redeem, by paying the amount set forth in the certificate of purchase, with all subsequent taxes paid, and 10 to 25 per cent upon the whole sum, with legal interest from the date of purchase or payment. Lands are sold for one year's delinquency, but the following year's tax (not yet delinquent) is embraced in the amount of the sale.

Transfer of Corporation Stocks. Shares in any corporations existing under laws of this State entitle the holder to a certificate, under the corporate seal, signed by the treasurer, certifying his property in such shares. A book must be kept by the corporation at its office or principal place of business, containing the names of stockholders, alphabetically arranged, showing where they reside, the number of shares each holds, and the time the ownership begins. This book is presumptive evidence in favor of the plaintiff of the facts it states in any suit against the corporation or a stockholder therein.

Wills. Nuncupative wills, where property of more than the value of $100 is bequeathed, are not valid, except as to the personal property and wages of soldiers and sailors in actual service. A nuncupative will must be reduced to writing within fifteen days after it shall have been declared and proved by two competent witnesses who shall have heard the testator request some of those present to bear witness thereto. No will in writing shall affect an estate, unless it be signed in the presence of witnesses by the testator, or by some one for him in his presence, with his consent, and attested and subscribed by two or more witnesses at his request, and in his presence and that of each other.

SYNOPSIS OF THE LAWS OF INDIAN TERRITORY

RELATING TO

BANKING AND COMMERCIAL USAGES.

Accounts. In suits upon accounts, the affidavit of the plaintiff, or his agent, that the same is just and correct, shall be sufficient to establish the same unless denied.

Acknowledgments may be taken within the Territory before the judge or clerk of the United States court, United States commissioners, and notaries public. Without the Territory, but within the United States, to be used in said Territory, they may be taken before the judge of any court of the United States, or of any State or Territorial court having a seal, or before the clerk of such court, or before any notary public.

Actions. In actions at law summons should be served ten days before the first day of the term, and in equity defendant has twenty days from service of summons in which to answer. Actions must be commenced in the judicial district in which at least one of the defendants resides, and at the place of holding court nearest the residence of the defendant. (*See Courts.*)

Administration. Claims must be authenticated and presented to the administrator or executor within one year from the date of letters, or they may be precluded from any benefit. Claims not presented to the administrator or executor within two years are forever barred. Priority of claims against estates are as follows: 1. Funeral expenses. 2. Expenses of last sickness, wages of servants, medicines, and medical attendance during last sickness. 3. Judgments which are liens on lands possessed by deceased. 4. All demands without regard to quality, which shall be exhibited within one year after the granting of letters. 5. All demands not exhibited within one year, but within two years. Foreign administrators may sue with like effect as if appointed here.

Appeals may be taken from the United States commissioners within thirty days from the rendition of the judgment to the United States court in the Indian Territory, and are tried *de novo*, provided the judgment is for $20 or over, exclusive of costs. No appeal lies when the judgment does not exceed the sum of $20. Appeals may be taken from the United States court in the Indian Territory to the court of appeals for the Indian Territory, and from thence to the United States circuit court of appeals for the eighth circuit, established by the act of congress, approved March 3, 1891, in the manner therein described and set forth, and also to the supreme court of the United States.

Assignments for the Benefit of Creditors can be made of all the property, or a part thereof. Any creditor or creditors may be preferred. Before any assignee of property for the benefit of creditors is entitled to take possession, sell, or in any way manage or control it, he must file in the office of the clerk of the United States court for the judicial division in which the property is located, a full and complete inventory and description of the property assigned, and execute a bond to the United States in double the estimated value of the property with good security, to be approved by the clerk. But title to the property vests in the assignee upon the execution and delivery of the deed by the assignor, and can not be defeated by an execution coming to the hands of an officer after delivery of the deed, but before the filing of the schedule and bond. The assignee must file annual accounts current within the court. He must sell the property at public auction, within 120 days after execution of the bond, giving thirty days' notice of the time and place of sale, and persons injured can sue on the assignee's bond.

Attachments. The plaintiff in an action may, at or after the commencement thereof, have an attachment against the property of the defendant in the following cases: Where the action is for the recovery of money, whether the sum is liquidated or unliquidated; where defendant, or some of defendants, is a foreign corporation or non-resident of the Territory, or has been absent therefrom four months; or has departed from the Territory with intent to defraud his creditors; or has left the judicial division of his residence to avoid the service of summons; or so conceals himself that a summons can not be served upon him; or is about to remove or has removed his property, or a material part thereof, out of the Territory, not leaving enough therein to satisfy the plaintiff's claim, or the claim of defendant's creditors; or has sold or otherwise disposed of his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat, hinder, or delay his creditors, or is about to so sell with such intent; and in an action for the possession of personal property where it has been ordered to be delivered to plaintiff, and where the property, or a part thereof, has been disposed of, concealed, or removed, so that the order can not be executed. But an attachment shall not be granted on the ground that defendant, or any of them, is a foreign corporation or non-resident of the Territory, for any claim, other than a demand or debt arising upon contract. Where only a part of the parties, defendant in an action, are included in an affidavit for attachment setting forth any one of the above causes, the process is issued only against the estate or interest of such defendants as are so embraced, and the action proceeds against the other defendants as a personal action in the ordinary form. Plaintiff must file a bond, with one or more sureties. The lien of an attachment is complete when the officer executes it. The order of attachment binds the defendant's property in the judicial division, which might be seized under an execution against him, from the time of the delivery of the order to the marshal or other officer, and can not be defeated by a subsequent sale or general assignment. Action by attachment may be brought in any judicial division in which defendant's attachable property or credits may be found, and several writs may be issued upon the same complaint and affidavit to different judicial divisions. An attachment may be ordered by the judge or clerk upon a debt not due, where the complaint, verified by oath, shows that defendant has sold or otherwise disposed of his property, or permitted it to be done, with fraudulent intent to cheat or defraud his creditors, or hinder or delay them in the collection of his debts, or is about to make such fraudulent sale, conveyance, or disposition of his property with such intent, or is about to remove his property or a material part thereof out of the Territory, with the intent or the effect of cheating or defrauding his creditors, or hindering or delaying them in the collection of their debts; and the complaint must also show the nature and amount of the plaintiff's claim, and when the same will become due. In all cases of attachment the defendant is at liberty to give bond and procure thereby the discharge of the attached property.

Banks. The laws of the United States relating to National banks have the same force and effect as elsewhere in the United States.

Chattel Mortgages. (*See Mortgages.*)

Contracts. The general law of contracts is in force except so far as modified by acts of Congress relating to this jurisdiction.

Conveyances. Real estate is held in common by the Indians, and citizens of the United States can not own realty, and can not convey it, but can occupy the same by lease or contract with individual Indians, when properly residing in the Territory.

Corporations. There is no law for the formation of corporations in the Indian Territory.

Costs. Non-residents are required to give a bond for costs in addition to deposit for estimated clerk's and marshall's fees.

Courts. The United States court in the Indian Territory has jurisdiction (except in Choctaw and Chickasaw nations, where by treaty a limited jurisdiction is retained by the tribal courts over controversies between their own citizens), in all civil causes where the defendants are found in or reside in the Indian Territory, in all matters where the amount involved, damages claimed, or thing in controversy is over $100. It also exercises the jurisdiction and powers of probate courts, and has exclusive original jurisdiction in all probate matters. The Indian Territory is divided into three judicial districts. The northern judicial district is composed of the Cherokee, Creek, and Seminole nations, and court sits twice each year at Muscogee, Vinita, Miami, Tahlequah, and Wagonner. The central judicial district is composed of the Choctaw nation, and court sits twice each year at South McAlester, Atoka, Antlers, and Cameron. The southern judicial district is composed of the Chickasaw nation, and court sits twice each year at Ardmore, Purcell, Pauls Valley, Ryan, and Chickasha. The Court of Appeals for the Indian Territory convenes twice each year at South McAlester at such times as the court may determine upon, according to the act of congress approved March 1, 1895 *Commissioners.* There are six United States commissioners appointed in each judicial district, with powers of justices of the peace of the State of Arkansas, with exclusive jurisdiction where the matter in controversy does not exceed $100, and concurrent with the United States court up to $300. They have also the same powers as circuit court commissioners throughout the United States. Mayors of towns incorporated under laws of Congress made with reference to the Indian Territory have like jurisdiction with commissioners within the territory embraced by the corporate limits of the town.

Days of Grace. (*See Notes and Bills of Exchange.*)

Depositions. The plaintiff may commence taking depositions immediately after service of summons, and defendant after filing answer. They may be taken on reasonable notice to the opposite party, or upon interrogatories and commission.

Descent and Distribution of Property. Personal property descends: 1. To the children or their descendants in equal parts. 2. If there be no children, then to the father, then to the mother; if no mother, then to the brothers and sisters, or their descendants in equal parts. 3. If there be no children, nor their descendants, father, mother, brothers or sisters, nor their descendants, then to the grandfather, grandmother, uncles, aunts, and their descendants in equal parts, and so on in other cases, without end, passing to the nearest lineal ancestor, and their children in equal parts. Posthumous children inherit in like manner as if born during life-time of intestate. Illegitimate children are capable of inheriting and transmitting an inheritance on the part of their mother in like manner as if they had been legitimate of their mother.

Divorce. The following are grounds for divorce: 1. Impotency. 2. Desertion for one year without a reasonable cause. 3. Where either party had a husband or wife living at the time of the marriage. 4. Where either party shall be convicted of a felony or other infamous crime. 5. Habitual drunkenness for one year, or cruel or barbarous treatment as to endanger the life of the other, or offers of indignities to person of the other as shall render his or her condition intolerable. 6. Adultery. 7. Insanity.

Dower. The widow is entitled to a dower of one-third of the personal estate of which her husband died possessed if no children survive, then to one-half of the said estate.

Executions. Execution can not be issued until ten days after judgment, unless by order of the court. The same becomes a lien on all personal property of the person against whom issued from the time the same is put in the hands of the proper officer. It may be stayed for three months by giving a good bond, except when the judgment is against a collecting officer or attorney at law or agent, or against a principal in favor of surety, or of a debt due having the force of a judgment, or a judgment for specific property, or its value in favor of vendor or mortgagor. Executions are not valid for the sale or conveyance of title to improvements made upon lands owned by an Indian nation, except where such improvements have been made by persons, companies, or corporations operating coal or other mines, railroads, or other industries under lease or permission of law of an Indian council, or charter or law of the United States. Upon a return of *nulla bona* on an execution upon any judgment against any adopted citizen of any Indian tribe, or against any person residing in any Indian country and not a citizen thereof, if the judgment debtor shall be the owner of any improvements upon real estate within the Indian Territory in excess of 160 acres occupied as a homestead, such improvements may be subjected to the payment of such judgment by a decree of the court in which such judgment was rendered.

Exemptions. The personal property of a resident, who is not married, or the head of a family, in specific articles to be selected by such resident not exceeding $200, in addition to wearing apparel, is exempt from attachment and execution. A resident who is married or is the head of a family has a like exemption to the value of $500 in addition to wearing apparel of his family.

Garnishments. After judgment the same may issue against any person believed to be indebted to or to have property belonging to the judgment debtor. In cases of attachment a writ of garnishment may issue before judgment.

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. (*See Married Women.*)

Interest. Six per cent per annum is the rate of interest by operation of law; the parties may agree in writing for as much as 10 per cent; all interest beyond this is usurious and voids the contract, both as to principal and interest. Judgments and decrees bear the same rate of interest as the contract sued on. If no rate is expressed, then 6 per cent.

Judgments. There is no lien established by the same. To fix a lien execution must be issued. Actions on the same must be commenced within ten years from the date of the judgment.

License. Traders must pay a license fee to the Indian nation of from $25 to $500 per year. Licenses are granted by the commissioner of Indian affairs for the term of one year. Traders must give a bond in the sum of $10,000 to obey laws and regulations of the interior department. Commercial travelers are not taxed.

Limitations. Action for liability on contract, express or implied, not in writing, all action for trespass on land or for libel, actions for taking or injuring goods or chattels, must be brought in three years. All action of crim. con., assault and battery, and false imprisonment, all actions of slander, special or general, and all actions against officers for escape of persons imprisoned on civil process, must be brought in one year. All other actions against officers for misfeasance or nonfeasance in office, actions upon penal statutes, where the penalty or part of it goes to the United States, or person suing for it, must be brought in two years. Actions on promissory notes not under seal, in five years; from due under seal, ten years. On official bonds of marshal or constables within four years from date of cause. Actions against Executors and Administrators, eight years from the time the cause of action accrued. The act applies to non-residents as well as residents. Fraudulently absconding from another State or Territory, without creditors' knowledge, suspends operation of statute until creditor becomes apprised of the residence of the debtor. On mutual accounts current, statute begins from the date of last item. A new promise to take a case out of statute must be in writing, and no joint-contractor can bind another by such new promise; part payment takes the case out of the statute from its date for a like period as that which obtained in the original contract. If claimant die before the expiration of the period, the representative where action survives has one year after the bar within which to sue, but not thereafter.

Married Women may hold separate property and carry on separate business. If she fails to schedule her property, the burden of proof is on her in a contest with her husband's creditors. Women become of age at eighteen. Wife's separate property not liable for any debt contracted by her unless the contract was made with special reference to it.

Mortgages and Chattel Mortgages. The law of mortgages for real estate has no application to the land tenures of the Indian Territory. Chattel mortgages, when properly proved or acknowledged, shall be recorded or filed in the judicial division in which the mortgagor resides. (See 49 Ark. 83.) The acknowledgment shall be by the grantor appearing in person before the proper authority, and stating that *he had executed the same for the consideration and purposes therein mentioned and set forth;* when it is to be proven it shall be done by one or more of the subscribing witnesses personally appearing before the proper officer, and stating on oath that he or they saw the grantor subscribe such deed or instrument of writing, or that the grantor acknowledged in his or their presence that he had subscribed and executed such deed or instrument for the purposes and consideration therein expressed, and that he or they had subscribed the same as witnesses at the request of the grantor. When the instrument is so proved or acknowledged and the mortgagee does not desire to record the same, he may file it in the clerk's office when he indorses upon the back thereof the following words: "This instrument is to be filed, but not recorded," and such indorsement must be signed by the mortgagee, his agent, or attorney. When so filed it is a lien on the property for one year from the date of the filing, but it will be void as against creditors after the expiration of one year unless within thirty days next preceding the expiration of one year from such filing; and each year thereafter the mortgagee, his agent, or attorney shall make an affidavit exhibiting at the time last aforesaid the interest of the mortgagee claimed by virtue of such mortgage, and if said mortgage is to secure the payment of money, the amount due and unpaid, and such affidavit shall be attached to and filed with the instrument or copy on file to which it relates. Mortgages executed by non-residents must be recorded in the district in which the property is located.

Notes and Bills of Exchange. The general rules of commercial law on these subjects prevail. Three days of grace are allowed, and this applies to bills of exchange payable at sight. There are no holidays peculiar to the Territory. Notes and bills due on Sunday, Fourth of July, or Christmas are to be presented and protested the day before, but notice need not be given until the day afterward. Acceptances must be made in writing. Protested bills bear interest at the rate of 10 per cent per annum.

Probate Law. (*See Wills.*)

Protest. (*See Notes and Bills of Exchange.*)

Replevin. In actions to recover specific personal property the plaintiff may have an order of delivery for the immediate possession of the same by filing an affidavit showing: 1. A particular description of the property. 2. Its actual value and his damages for its detention. 3. That he is the owner thereof or has a special ownership therein. 4. That the property is wrongfully detained by the defendant, and upon what manner of claim the same is so detained. 5. That it has not been taken under a fine, judgment, tax or execution, or if so, that it was exempt from seizure. Plaintiff must also give a bond in double the value of the property, conditioned that he will perform the judgment of the court by returning the property, if a return is adjudged, or its value, and pay such sum as may be adjudged against him, and all the costs of the action. Defendant has two days in which to give a retaining bond, and if judgment is rendered for plaintiff, judgment may be entered against defendant and his sureties.

Suits. (*See Courts.*)

Taxes. (*See License.*)

Wills. Every person twenty-one years old, of sound mind, may devise all his estate, and may dispose of goods and chattels at the age of eighteen. Married women can make wills. Every will (except where nuncupative wills are allowed) must be in writing and subscribed by the testator or some one for him, at his request, at the end, and, if signed by another, he must subscribe as witness, and state the fact in writing. This signing must be made, or acknowledged to have been so made, in the presence of each of the attesting witnesses, and at the time of the signing or acknowledging he must declare the instrument so subscribed to be his will. There must be at least two witnesses, each signing his name as such at the end of the will, at the request of the testator. Nuncupative wills are good to the value of $500. When a will of a non-resident of the Territory, relative to property within the same, has been proved without the same, an authenticated copy thereof and the certificate of probate thereof may be offered for probate in this Territory and admitted. The court here shall admit the copy, and, if it appears from the copy that the will was proved in the foreign court of probate, to be so executed as to be valid for personalty. Wills are proved and admitted to record by the United States court in the Indian Territory in the judicial division where the testator resided, and if he had no known residence in this Territory, then in the judicial division where he died, or where his estate or the greater part thereof lies, or where there may be any debts due him.

SYNOPSIS OF THE LAWS OF IOWA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MESSRS. DALE, ALLEN & PATTON, Attorneys at Law, Des Moines. (*See Card in Attorneys' List.*)

Acknowledgments of deeds to land made within the State are made before some court having a seal, or judge or clerk thereof, or justice of the peace, or notary public, or county auditor or his deputy elsewhere. In the United States before some judge of a court of record, or officer holding the seal thereof, or by a commissioner of deeds, appointed by the governor of the State, notary public, or justice of the peace; when made before a judge or justice of the peace his official character must be certified to by a clerk of a court of record of the county or district, under seal of the court, or by the secretary of State of the State or territory, as also the genuineness of his signature. The form of certificate is statutory. Acknowledgments may also be taken elsewhere in the United States before any officer authorized to take acknowledgments in such State or territory, but must be accompanied by a similar certificate showing his authority, official character, and the genuineness of his signature. In foreign countries deeds may be acknowledged before any officer authorized by the laws of such country to certify to acknowledgments, or any ambassador, minister, secretary of legation, consul, vice consul, charge d' affaires, consular agent, or other officer of the United States properly authorized to issue certificate under the seal of the United States, but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above named officers of the United States, by his official written statement that full faith and credit is due to the certificate of such foreign officer. Witnesses are not required.

Actions. Actions are commenced by serving notice, stating the nature of the claim, and filing a petition, stating in ordinary and concise language the facts constituting plaintiff's cause of action. The petition must be filed ten days before the term of court at which action is brought. All actions must be prosecuted in the name of the real party in interest, and must be brought in the county where the defendants, or some of them, reside; or, if real property is involved, then in the county wherein the property is situated. If the action is on a written contract, it may be brought where, by its terms, it is to be performed; or the cause, or some part thereof, arose. In actions upon negotiable paper, in which a maker residing in the State is sued, the action must be brought in a county wherein the maker, or if makers, where one of them resides, except when made payable at a particular place. Actions against insurance companies in any county in which the principal place of business is kept or in which the contract of insurance was made or in which the loss insured against occurred, or, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred or in the county of plaintiff's residence. When a corporation, company, or individual has an office or an agency in any county for the transaction of business, any actions growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located.

Administration of Estates. Where an executor is not appointed by will, administration shall be granted: 1. To the spouse of the deceased. 2. To the next of kin. 3. To creditors. 4. To any other person whom the court may select. Claims against the estate of a deceased person are payable in the following order: 1. Debts entitled to a preference under the laws of the United States. 2. Public rates and taxes. 3. Claims filed within six months after the first publication of the notice given by the executors or administrators of their appointment. 4. All other debts. 5. Legacies and distributive shares. All claims of the fourth of the above classes not filed and allowed, or if filed and notice thereof not served within twelve months from the giving of the notice of appointment are barred, except as to actions against decedent pending in the district or supreme court at the time of his death, or unless peculiar circumstances entitle the claimant to equitable relief.

Aliens. Non-resident aliens or corporations incorporated under the laws of any foreign country or corporations organized in this country one-half of the stock of which is owned or controlled by non-resident aliens are prohibited from acquiring title to or holding any real estate in Iowa, but the non-resident alien widow, heirs, or devisees of an alien or naturalized citizen may hold the same for twenty years, and if not sold within that time, escheats to the State. Aliens may acquire property of any kind within a city or town or lands not exceeding 320 acres or stock in any corporation for pecuniary profit and may alienate or devise the same, but this law does not affect personal property. A lien holder may acquire title to the property embraced in such lien but real estate so acquired must be sold within ten years after title is perfected in an alien, otherwise it will escheat to the State.

Appeals. The supreme court has appellate jurisdiction over all judgments and decisions of all courts of record. If the amount involved is $100 or less the case is only appealable when the trial judge shall, during the term in which judgment is entered, certify that the cause is one in which the appeal should be allowed. Appeals from judgment of a justice's court are to the district court, and can only be taken where the amount involved exceeds $25, and the same must be perfected within twenty days after the rendition of the judgment.

Arbitration. All controversies which might be the subject of civil action may be submitted to the decision of one or more arbitrators, the same to be perfected by a written agreement, signed and acknowledged by the parties of the agreement, stating the particular matters to be arbitrated, together with the names of the arbitrators, and the court by which judgment on award is to be rendered.

Arrest. No person can be imprisoned for debt on either mesne or final process, unless in case of fraud. Debtors, however, may be ordered to appear before a court of record wherein a judgment has been rendered, and if the debtor is about to leave the State, or conceal himself, he may be arrested and compelled to give bond to appear before the court for examination, and in the meantime, not dispose of his property.

Assignments and Insolvency. General Assignments not valid unless for benefit of all creditors, when assent of creditors is presumed. The debtor must annex to the instrument of assignment a sworn inventory and list of creditors; and such instrument must be acknowledged and all of the papers recorded like a deed of real estate. The assignment vests in the assignee title to all property of the debtor. Assignee must give bonds, prepare a verified inventory and valuation, and notify creditors by mail to file claims within three months. All claims not filed within three months after notice published or within such extended time as the court grants, not exceeding nine months, including claims not yet due, can not be paid until all claims filed within said time are paid. An assignment does not discharge the debtor from his debts and liabilities, but only entitles creditors to share equally in his estate. All claims filed must be sworn to.

Attachment process will issue against all property not exempt from execution on filing a sworn petition, alleging, 1st, that the defendant is a foreign corporation, or acting as such; or 2d, that he is a non-resident of the State; or 3d, that he is about to remove his property out of the State, without leaving sufficient remaining for the payment of his debts; or 4th, that he has disposed of his property (in whole or in part) with intent to defraud his creditors; 5th, that the defendant is about to dispose of his property with intent to defraud his creditors; 6th, that he has absconded so that ordinary process can not be served upon him; 7th, that he is about to remove permanently out of the county and has property therein not exempt from execution, and that he refuses to pay or secure the plaintiff; 8th, that he is about to remove permanently out of the State, and refuses to pay or secure the debt due the plaintiff; 9th, that he is about to remove his property, or a part thereof, out of the county, with intent to defraud his creditors; 10th, that he is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; 11th, that he has property or rights in action which he conceals; 12th, that the debt is due for property obtained under false pretenses. Attachment may be brought before the debt is due when nothing but time is wanting to fix an absolute indebtedness and the 4th, 5th, 7th or 12th of the above causes can be alleged under oath. The first attachment levied becomes the first lien, and there is no prorating. The penalty on an attachment bond is three times the amount claimed. Exemptions under attachment are the same as under execution. A penalty in the way of fine from not less than $10 nor more than $50 is imposed by the statute upon any person who shall attempt to deprive any resident of Iowa from any exemption of property from levy or sale under attachment and garnishment, where the claim could have been sued in Iowa and is sent out of the State to be collected by proceedings in attachment, garnishment, or any other process.

Banks. The constitution provides that any act creating banking associations must be submitted separately to a vote of the people. Stockholders are individually responsible to creditors to the amount of their stock over the stock held. In case of insolvency, bill holders are to be preferred. Suspension of specie payment is not permitted.

Savings Banks may be formed by five or more persons of lawful age, a majority of whom are citizens of Iowa, for the purpose of receiving deposits, investing same, paying interest on dividends thereon and transacting business usual to such institutions, but can not issue paper to circulate as money. Articles of Incorporation must be signed and acknowledged by the corporators, stating the object and capital of the corporation, its duration not exceeding fifty years, and other specified particulars, which articles must be recorded by the recorder of the county in which the bank is to be located, and also by the secretary of State. Notice of the incorporation must be published in same county giving the substance of its articles of incorporation. The capital stock may be $10,000 or more in cities, towns or villages of 10,000 or less population, and $50,000 in larger cities, divided into shares of $100 each, to be issued only upon full payment, and are transferable on the books of the company. The capital stock may be increased by a vote of two-thirds of its shares, cast at a stockholders' meeting, after giving the prescribed notice, which fact is proved by affidavit of the chairman and secretary of the meeting, and must be recorded like the original Articles of Incorporation. At any stockholders' meeting each stockholder may cast one vote in person or by proxy, for each share held by him. It is managed by a board of directors composed of from five to nine members, each of whom must own one share of stock if the capital is $20,000 or under; two shares if above that but under $30,000; three shares if above that but under $40,000; four shares if above that but under $50,000, and five shares if over $50,000. Each director must take the oath required by law. A majority of directors is a quorum, but three affirmative votes are necessary to carry any measure. Deposits can not exceed ten times the capital stock, and said capital stock must be safely invested as a guaranty fund for the better security of depositors. Investment of funds may be made in bonds, or interest-bearing notes or certificates of the United States, or of this State, issued pursuant to the authority or law, in bonds or warrants of any city, town, county, or school district of this State, but the assets of the bank shall not exceed 25 per cent of such bonds or warrants; in notes or bonds secured by mortgage or deed of trust upon unincumbered real estate in this State, worth at least twice the amount loaned thereon. They shall not purchase, hold, or make loans upon the shares of their capital stock. They may hold real estate to do business in, and also that purchased at foreclosure or other judicial sales for debts due it, or by redemption as junior mortgagee or judgment creditor. Such banks shall not contract debts except for deposits to obtain money with which to pay deposits, and for the necessary expenses of transacting business. A cash reserve must be at all times kept in savings bank doing a commercial business in towns having a population of 3,000 or less inhabitants, equal to fifteen per cent of their commercial deposits and eight per cent of their savings deposits; if the population is over 3,000 such reserve must be 20 per cent of their commercial deposits and eight per cent of their savings deposits. Three-fourths of this reserve may be kept on deposit subject to call in other State or National banks. Savings banks may be dissolved by a three-fourths vote of the stockholders, after giving the prescribed notice of a stockholders' meeting. The name "Savings Bank" can only be used by banks organized under this chapter, and a violation of this provision is made a criminal offense.

State Banks. Corporations may be organized to transact banking business, other than savings banks, which must include the word "State" in the corporate name, and the use of the word "State" in its name is prohibited to all other banking institutions. There must be articles of incorporation signed by not less than five persons specifying the matters required by law, which must be filed and recorded in the same manner as required for savings banks. Capital of State banks must be $50,000 or more in cities having a population exceeding 3,000, but such banks may be organized with a capital of $25,000 in cities and towns having a less population. The capital must be divided into shares of $100 each and fully paid for when issued. Proof of payment of such capital must be made to the auditor of State who issues a certificate showing compliance with law, and four weeks' publication of such certificate must be made in a newspaper. The business and property are managed by a board of directors of not less than five, each of whom must be a shareholder, who must own two shares if the capital is less than $30,000; three shares if more than that, but less than $40,000; four shares if more than that, but less than $50,000, and five shares if $50,000 or over. Each director must

take the oath required by statute, which must be filed with the auditor of State. A reserve of not less than 10 per cent of their total deposits must be kept in banks located in cities and towns having less than 3,000 population, and 15 per cent of their total deposits in other State banks. Three-fourths of said reserve may be kept on deposit subject to call, with other State or National banks.

Savings and State Banks. Use of bank funds or a loan to directors otherwise than as provided by law is made a criminal offense. The limit of liability to any bank, of any person, company, corporation, or firm, including in the liabilities of a company or firm, the liabilities of the several members thereof, shall not exceed 20 per cent of the actually paid up capital of such bank, verified by an officer and attested by the signature of three directors, or verified by two officers and attested by two directors. The auditor may examine any bank whenever he sees proper, and shall call upon four times a year for a report of its condition upon any given day which has passed, and may call for additional reports when he deems the same necessary. When any bank has refused to pay its deposits when payable, or has become insolvent, or its capital is impaired, or has violated the law, or is conducting its business in an unsafe manner, the auditor of State may cause its affairs to be examined, the expenses to be paid by said bank, but if the bank refuses to comply with the demands of the auditor, with the assent of the attorney general, he may apply for the appointment of a receiver. No general assignment by any bank for the benefit of creditors is of any validity. If the capital is impaired the auditor may require an assessment to be made, and the directors of the bank are individually responsible if they fail to make or enforce such assessment. All stockholders of banks are liable to creditors of their corporation over and above the amount of stock held by them to an amount equal to their respective shares for all liabilities accruing while they remain such stockholders, and may be severally compelled to pay such deficiency in proportion to the amount of stock owned by each, which liability may be enforced by an assignee or receiver of the bank, or by an individual creditor. Loan and trust companies may receive time deposits and issue drafts on their depositaries, but are subject to examination, regulation, and control of the State auditor like savings and State banks, and then stockholders have the same liability as in savings or State banks. No other kind of corporation is permitted to engage in banking business. False statements, intentional fraud, and receiving deposits when insolvent are prohibited under severe penalty. Any refusal of the shareholder to pay such assessment, authorizes the sale of his stock to pay the same. Shares of stock of savings and State banks and loan and trust companies are assessed to the banks or company, not the individual stockholders, and are listed at their real value less the capital actually invested in real estate, and 25 per cent of the balance so ascertained is the assessed and taxable value.

Chattel Mortgages. Chattel mortgages must be signed, acknowledged, and recorded like deeds of real estate and if upon personal property exempt from execution and attachment they are of no validity as to such exempt property unless signed by both husband and wife, if the owner of such property is married. Any mortgage of personal property to secure the payment of money only, and in which the time of payment is fixed, may be foreclosed by notice of sale, unless a stipulation to the contrary has been agreed upon by the parties; or it may be foreclosed in court. The purchaser takes all the title and interest which the mortgagor had in the property sold; and the sheriff or the person conducting the sale shall execute a bill of sale of the property disposed of. They need not be renewed, and are good until the cause of action is barred by the statute of limitation, to wit: ten years from the accruing of the cause of action. The mortgagor, under written stipulations, is entitled to the possession of the property. With proper covenants, a chattel mortgage will cover future acquisitions to stocks of merchandise. Property covered by chattel mortgages may be levied upon, if not exempt from execution, when the debt is due, by paying, or offering to pay, the amount of the mortgage debt, or depositing the amount with the clerk of the district court of the county where the mortgaged property is found. This does not, however, prevent contests as to the legality of the mortgage or of the amount due.

Collateral Securities. When shares of stock of a private corporation are transferred as collateral security, the transferee may, in writing, notify the secretary of the corporation, and from the time of such notice and until written notice that the stock has ceased to be collateral, the stock shall be considered in law as transferred on the books of the corporation without actual transfer, and when the transferee ceases to hold the stock as collateral, it is his duty to notify the secretary of the corporation of that fact. The secretary must keep a record of all of such notices subject to public inspection. No holder of stock as co lateral security is liable for assessments on the same. Collaterals and pledges are governed by the terms of the deposit, if in writing, and no sale of them can be made if the writing so provides; otherwise, chattel property pledged or deposited as collateral security may be sold under the provisions of law which are substantially similar to the foreclosure of chattel mortgages under notice and sale. But the pledgee is given the alternative right of foreclosing such collaterals or pledge in equity, in which action all persons interested therein may be made parties; judgment will be rendered for the amount due the pledgee and costs with special execution for the sale of the pledge or collaterals and general execution for any balance unsatisfied.

Conditional Sales. No sale, contract, or lease wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee or lessee in actual possession, obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor or lessor, acknowledged and recorded the same as chattel mortgages.

Conveyances. No particular form is necessary for conveyances or mortgages. The name of the parties, the description of the property, the consideration, the date, signature, and acknowledgment, is all that is necessary; as between the parties they are valid without being recorded. The wife must join with her husband in conveyances, and a conveyance of the homestead is of no validity unless husband and wife concur in and sign the same joint instrument. Corporations execute conveyances under its corporate seal; such conveyances must be acknowledged by the proper officers.

Corporations. All corporations are organized under the general law of the State. Any number of persons can incorporate for the transaction of any legal business. The articles of incorporation for pecuniary profit must be signed by the corporators and acknowledged, filed with the recorder of the county where the principal place of business is to be located, and with the secretary of State. They must also pay an incorporation fee of $25 and an additional fee of $1 for each $100 of stock authorized in excess of $10,000, not exceeding in the aggregate $2,000, mutual creamery associations being exempted. The articles must fix the highest amount of indebtedness which may be incurred, which must not exceed two-thirds of their capital stock, and may also determine whether the private property is to be exempt from corporate debts. All stockholders are liable to creditors for unpaid installments of stock. No certificate or shares of stock shall be issued by any association without having endorsed on the face thereof the amount or proportion of the par value which has been paid to the corporation issuing the same and whether such payment has been in money or property; violation of this provision is a criminal offense. Foreign corporations, for pecuniary profit, other than mercantile or manufacturing, desiring to do business in this State, must file with the secretary of State a certified copy of its articles, duly attested, accompanied by resolutions of its board of directors or stockholders, authorizing the filing thereof, and also authorizing service of process on any of its officers or agents doing business in this State, and asking for a permit; it must also pay the same incorporation fees required of domestic corporations, except those organized prior to September 1, 1886, whereupon it will be issued by the secretary of State, and without any permit, they are to be subjected to forfeit $100 for each and every day while engaged in the transaction of business within the State; also a fine of like amount or imprisonment, not exceeding 30 days, of the agent conducting the business of such corporation without a permit. They are not, however, prevented from buying, selling, and otherwise dealing in notes, bonds, mortgages, and other securities.

Courts. *Terms and Jurisdiction.* The district court has jurisdiction of all actions, civil and equitable, and has criminal and probate jurisdiction. Superior courts may be established by the vote of the people in any city of 7,000 inhabitants. It has jurisdiction to try all violations of city ordinances, and the same criminal jurisdiction as justice of the peace courts. It has jurisdiction to try and determine civil and criminal appeals and civil writs of error from justices of the peace, situated in the township where the court is located. Has the same jurisdiction as the district court to try all suits in law and equity, except granting divorces, allmony, and separate maintenance, and it has no probate jurisdiction. Transcript from superior and justices' courts must be filed in district court to create a lien on real estate, and are then enforced as judgments of the district court. Justice's jurisdiction, $100, or, by consent of parties, $300. The supreme court has only appellate jurisdiction and holds its sessions at Des Moines, in January, May, and October.

Days of Grace. All bonds, notes, and bills of exchange, and sight drafts are entitled to three days of grace. Whenever the day of maturity falls upon a Sunday, first day of January, twenty-second day of February, thirtieth day of May, fourth day of July, first Monday in September, twenty-fifth day of December, the day of the general election, or any day appointed by the president of the United States, or the governor of this State, as a public fast, or Thanksgiving, or any other public holiday, the instrument shall be considered as falling due on the succeeding business day.

Depositions. Depositions may be taken within the State upon notice and within or without the State upon commission, but the parties may agree to some other method. When served upon the party, at least five days' notice is required, and if served upon an attorney of the party, at least ten days' notice is necessary. If the party is a non-resident or his residence is unknown or in case of default, if such party has no attorney of record who is a resident of the State, the notice of taking or of suing out a commission to take a deposition may be given by filing the notice or notice and copy of the interrogatories attached with the clerk of the court in which the action is pending, ten days before the taking of the depositions or issuance of the commission. When taken upon commission a copy of the interrogatories to be propounded to the witness must accompany the notice. When notice of suing out a commission is served the adverse party may elect to appear orally and cross examine the witness by serving notice of such election on the opposite party or his attorney before the issuing of the commission; the other party must then inform the party or attorney so electing, of the place, date and hour of the taking of the deposition, at least, five days before the deposition is taken. In such case the party taking the deposition may waive the commission and examine orally. The deposition shall then be reduced to writing in the manner required for taking depositions on notice. When taken upon commission no party, agent, or attorney of such party may be present unless both are present or represented and the certificate must state if any party, agent, or attorney was present. The deposition may be taken in shorthand and must be accompanied by a translation of the shorthand notes, and the notes and translation must be returned, together with the deposition, and the stenographer must be sworn. Depositions may be taken before the clerk or judge of any court of record, any commissioner appointed by the governor of Iowa to take acknowledgments of deeds in another State, a notary public or consul or consular agent of the United States, or by any person designated by the court or agreed upon by the parties. Each deposition must be accompanied by a certificate of the person taking it, certifying the facts required by law, which are endorsed upon the commission when one issues. If the officer have no seal, unless selected by agreement of the parties, his signature and official character must be authenticated by the certificate of a court of record under its seal, or that of the officer having in charge the seal of the State. A seal is presumptive evidence of the genuineness of the signature and the official character of the officer having a seal. Courts are also authorized to appoint commissioners to take deposition. They may be written down before any judge, consul, justice of the peace, notary public, or any commissioner duly appointed by the governor of this State.

Descent and Distribution of Property. Subject to rights of dower and other charges thereon, and burdens imposed during the lifetime of the decedent, the estate of an intestate shall descend in equal shares to his children. The heirs of any deceased child shall inherit in same manner as though such child had outlived his parent. If the intestate leave no issue, one-half of his estate shall go to the parents, the other to the spouse. If no surviving spouse, the whole thereof shall go to his parents or the survivor of them; and so on through ascending ancestors and their issue, if both parents be dead. Personal property not necessary to pay debts is distributed to the same persons, and in the same proportions as though it were real estate.

Divorce. Divorces are granted in equity in the district court for the following causes: 1. Adultery committed subsequent to marriage. 2. Desertion, without reasonable cause, for two years. 3. Conviction of felony after marriage. 4. Addiction to habitual drunkenness after marriage. 5. Inhuman treatment such as to endanger the life of wife. The husband may obtain a divorce for like causes. When a divorce is decreed, the court may make such order in relation to the children and property of the parties, and the maintenance of the wife, as shall be right and proper, and the parties forfeit all rights acquired by the marriage. They are not granted on the testimony of the plaintiff alone, and all such actions must be heard in open court.

Dower. Dower in Iowa is abolished, but the surviving spouse is entitled to one-third in value of all the legal and equitable estates in real property possessed by the deceased spouse at any time during the marriage, which have not been sold on execution or any other judicial sale, and to which such survivor has made no relinquishment of right.

Executions may issue immediately upon the rendition of judgment, and are returnable in seventy days from the date of issue. On the judgment debtor entering good and sufficient security by bond on the proper court records for the amount of such judgment, interest, and

costs—accrued and to accrue—he can have a stay of execution as follows: Under $100, three months; above that sum, six months. Such bond shall be filed and recorded and have the effect of a judgment. Stay must be taken within ten days from the date of entry of judgment, and the party taking such stay, if personally served with process, shall not afterward be allowed to appeal. If the judgment is not fully paid at the expiration of the stay, judgment is entered against the surety, and execution may be issued forthwith. After stay, judgment draws 8 per cent interest by operation of law. There can be no stay for wages due mechanic or laboring man, nor by a surety on stay bond. Defendant may redeem real property sold under execution at any time within twelve months, meantime remaining in possession of the property, but where he has taken an appeal or stay of execution he can not redeem. During the first six months he has exclusive right of redemption, but after that time, and before the expiration of nine months, any creditor having a lien can redeem.

Exemptions. Homestead of 40 acres in country and half an acre in city or town, with buildings, without regard to value. Pension money, or homestead procured by pension money, exempt from attachment or execution, whether the pensioner is the head of a family or not, and this applies to debts contracted prior to the purchase of the homestead. Pension money, whether in possession, deposited, loaned, or invested. Personal property exempt includes tools, instruments, library, necessary team, etc., of mechanic, farmer, teacher, or professional man; wearing apparel, household and kitchen furniture, $200; certain farm animals and necessary feed for six months. Foregoing relates only to residents, being heads of families; unmarried persons and non-residents being only entitled to retain their own clothing and trunks, save and except pensioners. Where debtor is a printer, the printing press and types, furniture and material up to $1,200, are exempt. Earnings of debtor within 90 days of levy are exempt. Poultry exempt to head of a family, and to any woman whether the head of a family or not. One sewing machine exempt to seamstress. No exemptions waived by failure to except to levy of execution or to designate or select exempt property, unless he fails or neglects to do so when required in writing by the officer about to levy thereon.

Fraud. In actions for fraud, the cause of action shall not be deemed to have accrued until the fraud complained of shall have been discovered by the party aggrieved. In actions brought by a judgment creditor to set aside a fraudulent conveyance of property from one spouse to the other and to subject said property to execution, either husband or wife may be compelled to testify against the other. Gross fraud is punishable by fine or imprisonment.

Garnishment. (*See Attachments.*)

Holidays. The holidays established by State law relating to bank paper, are set out under sub-title "days of grace," to which refer. The same days, except the first Monday in September, public fast days, or any other public holiday, are legal holidays upon which no person can be held to answer or appear in any court, or take depositions on notice.

Husband and Wife. (*See Married Women.*)

Interest. Legal rate, 8 per cent. Judgments draw 6 per cent, or such rate as is fixed by the contract on which the judgment or decree is rendered, not exceeding 8 per cent per annum. Open accounts draw 6 per cent after six months from date of last item; money loaned, money due, money due on settlement of accounts, bear interest at 6 per cent per annum. Contract for more than 8 per cent forfeits all interest and costs.

Judgments in the district and superior courts may be obtained at first term after suit commenced, if undefended, an equitable action, except one for foreclosure of mortgage, or mechanic's lien, or for divorce, is triable at the second term after the case is at issue. Judgments of the district court are liens on real estate owned by the debtor at the time of rendition. If the lands lie in any other county, from the time of filing therein an attested copy of the judgment. Lien also covers all lands which defendant may acquire within ten years from date of judgment. Judgments of superior courts and justice of peace courts become liens on real estate by filing transcript in district court within county where obtained, and become liens in other counties in the same manner as if rendered in the district court.

Limitations. Actions for injuries to person caused by defective roads, bridges, sidewalks, or streets, must be brought within three months, unless written notice to the municipal corporation has been given within sixty days from the injury; to enforce payment of a penalty or forfeiture under an ordinance, within one year; for injuries to person or reputation, including injuries to relative rights, whether based on contract or tort, or to recover a statutory penalty or enforce mechanic's lien, two years. Against a public officer for official negligence, or malfeasance, including money collected on execution and not paid over, three years. On unwritten contracts, open accounts, fraud solely cognizable in equity, and to set aside a will, five years. On written contracts, and to recover real estate, ten years. On judgments in courts of record, twenty years. Time of defendant's absence from this State is deducted in computing the time of limitation. Minors and insane persons have one year after the termination of disability to commence actions. Written admission of debt, or written promise to pay, revives the debt.

Married Women may own in their own right real and personal property acquired by descent, gift, or purchase, and may manage, sell, convey, and devise the same by will in the same manner as the husband can property belonging to him. Neither husband nor wife is liable for the debts or liabilities of the other incurred before or after marriage, nor are the wages, earnings, or property of either, nor the rent or income of such property, liable for the separate debts of the other. Contracts may be made by a wife and liabilities incurred, and the same enforced by or against her, to the same extent and in the same manner as if she were unmarried. Neither spouse has any interest in property owned by the other which can be the subject of contract between them, nor such interest as will make such property liable for contracts or liabilities of the one not the owner of the property. But both are liable for the expenses of the family, and the education of the children, whether contracted for by one or the other. They may be sued jointly or separately therefor. The period of minority extends, in males, to the age of twenty-one years, and in females to that of eighteen years, but all minors attain their majority by marriage, so far as civil contracts are concerned. By consent of parent or guardian marriage between a male of sixteen years and a female of fourteen years is valid.

Mortgages must be subscribed by the parties, acknowledged and recorded same as deeds; are foreclosed by equitable action. The wife should join in the conveyance, except mortgages for purchase money. The mortgagor has one year in which to redeem after execution sale. When a mortgage is paid off, satisfaction thereof must be made on margin of the record, or by satisfaction piece, acknowledged and recorded. If no satisfaction is entered within thirty days after request in writing, the mortgagee forfeits $25. (*See Chattel Mortgages.*)

Notes and Bills of Exchange. Grace is allowed upon all negotiable bills or notes payable within the State according to the law merchant, except those drawn payable on demand, and notice of non-acceptance, or non-payment, or both, is required according to the rules of commercial law. (*See Days of Grace.*) Damages allowed on protested paper: 3 to 5 per cent. To hold indorser note must be duly presented, payment refused, protested, and indorser notified. Defenses to non-negotiable paper and accounts accrued after notice in writing of assignment to maker invalid as against assignee. All rights of action are assignable.

Powers of Attorney. A power of attorney to convey, or in any manner affect real estate, must be acknowledged and recorded. A revocation of such power must be acknowledged and recorded in the same office wherein the original power of attorney is recorded.

Probate Law. (*See Administration of Estates.*)

Protest. (*See Notes and Bills of Exchange.*) In case of a refusal by the maker, drawer, or acceptor of any promissory note, bill of exchange, or other commercial paper, the notary making the demand may inform the party to be charged, if in the same town, or township, by notice deposited in the nearest post office, on the day of demand, and no other notice is necessary.

Replevin. In actions for the recovery of personal property, the petition must be verified; and if plaintiff desires immediate delivery of the property, he shall execute a bond for double the value of the property sought to be recovered. The defendant may stay all proceedings and retain the property by executing a bond to the plaintiff, with sureties to be approved by the clerk.

Suits. (*See Actions.*)

Taxes. Property is listed at its actual value which means its value in the market in the ordinary course of trade. Twenty-five per cent of this actual value is the assessed and taxable value, but the assessed valuation of any taxing district can not exceed the average maximum valuation possible for assessment for the years 1896 and 1897. State and county taxes become due and payable on first Monday of January, and one-half thereof may be paid before the first day of March succeeding the levy, and the remaining one-half before the first day of September following; provided, where the half has not been paid before the first day of April succeeding the levy, the whole tax shall become delinquent from the first day of March following the levy. If the second installment be not paid before the first day of October succeeding the levy, it shall be delinquent. All delinquent taxes draw interest at the rate of 1 per cent per month until paid. Personal property is liable to distress and sale for all taxes, and the tax list is the warrant therefor. Taxes on stocks of goods or merchandise are and continue a lien thereon when sold in bulk and may be collected from the owner, purchaser or vendee. Taxes on personal and real property are made a perpetual lien on real property. Lands are sold on the first Monday in December after taxes become delinquent. Three years are allowed in which to redeem by payment of amount for which lands were sold, with 8 per cent penalty, and 8 per cent per annum interest upon the whole amount. Before a valid tax deed can be executed the owner of the tax sale certificate must after two years and nine months from the tax sale, give to the person to whom the said land is assessed, and the person in actual possession written notice that deed will be taken ninety days hence. Where land is assessed unknown and is unoccupied, no notice is necessary. A non-resident may file with the treasurer of the county a written appointment as his agent of some resident of the county where the land is situated, upon whom personal service must be made. Taxes become a lien as between vendor and vendee December 31st of each year. City taxes are levied by the city council and collected by the county treasurer, the maximum levies being fixed by law. In a few cities under special charters, the assessment levy, collection and tax sales are made in accordance with their charters.

Transfer of Corporation Stocks. SEC. 1078. The transfer of shares is not valid, except as between the parties thereto, until it is regularly entered on the books of the company, so as to show the name of the person by, and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not in any way exempt the person making it from any liability of said corporation created prior thereto. The books of the company must be so kept as to show the original stockholders, their interests, the amount paid on their shares, and all transfers thereof; and such books, or a correct copy thereof, so far as the items in this section are concerned, shall be subject to the inspection of any person desiring the same. (*See Collateral Securities.*)

Trust Deeds. They must be executed and foreclosed, and considered as mortgages. That is, the power of sale is abolished on notice, and they must be foreclosed by equitable action.

Wills. Any person of full age and sound mind may dispose of his property by will, subject to the rights of homestead and exemption created by law and the distributive share in his estate given by law to the surviving spouse, except is sufficient to pay his debts, and expenses of administration. Wills, to be valid, must be written, witnessed by two competent witnesses, signed by the testator, or by some person in his presence and by his express direction. Subscribing witnesses can derive no benefit from a will, unless there be two competent witnesses without them. Wills executed outside of Iowa, in accordance with the laws of the State where executed or of the testator's domicile, if in writing and subscribed by the testator are valid in Iowa. If probated in any other State or country they shall be admitted to probate in this State on the production of a copy of such will, and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probation was made or of the probate judge, under seal, if they have one. All wills must be probated before they can be effectual.

SYNOPSIS OF THE LAWS OF KANSAS

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by J. G. SLONECKER, Esq., Attorney at Law, Topeka. (*See Card in Attorneys' List.*)

Acknowledgments. (*See Deeds.*)

Actions. Civil actions are begun in the courts by filing a petition and præcipe in the office of the clerk, and causing summons to issue thereon. Security for costs must be given by the plaintiff in each case. Non-resident plaintiffs may deposit a sum of money satisfactory to the clerk, and residents can deposit $15 in lieu of bond for costs. Actions concerning real estate must be brought in the county in which the land or a part of it is situated; other actions must be brought in the county in which the defendants or some one of them reside or may be summoned, except actions against foreign corporations and non-residents, and in the latter case the action may be brought in any county where the defendant has property or debts owing to him. Actions against domestic corporations may be brought in the county in which the corporation is situated or has its principal place of business, or in which any

of the principal officers reside or may be summoned. If the corporation is an insurance company, the action may be brought in the county where the cause of action or some part thereof arose, and as to foreign insurance companies the summons may be served upon the State superintendent of insurance. Actions for divorce may be brought in the county of which the plaintiff is an actual resident.

Administration of Estates. Probate courts in each county have jurisdiction of estates. Executors or administrators must give bond in double the amount of the value of the estate, but in the cases of executors where the will provides that no bond shall be required the court shall not require any. Letters of administration shall be granted to the widow or next of kin, unless they voluntarily renounce the same. An inventory of the estate must be filed within sixty days with the probate court and the personal property shall be appraised by three persons appointed by the court. Personal property liable to the payment of debts shall be sold within three months; at least two weeks' notice being required in some newspaper of general circulation in the county. Demands against the estate are divided into the following classes: 1. Funeral expenses. 2. Expenses of the last sickness; wages of servants; demands for medicines and medical attendance during the last sickness and expense of administration. 3. Debts due the State. 4. Judgments rendered against the deceased in his lifetime; but if such judgments are liens upon real estate and the estate be insolvent, such judgments shall be paid without reference to classification, except the first two which have precedence. 5. All demands without regard to quality which shall be legally exhibited against the estate in one year after granting letters of administration. 6. All demands thus exhibited after the end of one year and within two years. 7. All demands thus exhibited after the expiration of two years and within three years. Demands not exhibited within three years are barred, except as to infants, persons of unsound mind or persons imprisoned or absent from the United States, who shall have three years after the removal of their disabilities. If the personal property is insufficient to pay the debts, the executor or administrator shall apply to the probate court for authority to sell the real estate. Notice of this application must be given in such manner and for such length of time as the court designates. The real estate must be appraised and four weeks' notice given in some newspaper of general circulation, and can not sell for less than two-thirds of the appraised value, and the executor or administrator can not become either directly or indirectly the purchaser at the sale. The court may order the real estate sold at private sale, in which case it shall not be sold for less than three-fourths of the appraised value. Foreign executors, and administrators with the will annexed, may sell real estate in this State in accordance with the power contained in the will, unless administration upon the estate has been granted in this State; provided that at the time of such conveyance a copy of such will has been recorded in the office of the probate court in the county in which the land is situated.

Affidavits. Affidavits may be made in or out of the State by the same authority and with like authentication, as depositions.

Aliens, if non-residents, can not acquire title to real estate; but heirs of aliens who have heretofore acquired land may take such land by devise or descent, and hold the same for three years if of age, and for five years if minors, when it reverts to the State if not previously sold in good faith. Minor aliens residing in the United States may acquire title by purchase and retain it for six years after they might, under the naturalization laws, have declared their intentions to become citizens, when it shall revert to the State if such aliens have not become citizens. Resident aliens who have declared under the naturalization laws their intentions to become citizens may, during six years thereafter, exercise all the property rights of citizens, when the land owned by them shall escheat to the State, if such aliens have not become citizens. No corporations in which more than 20 per cent of stock is owned by aliens shall acquire or hold real estate.

Appeals. Appeals are taken from the judgment of a justice of the peace to the district court by filing a bond of not less than $50 and not less than double the amount of the judgment appealed from. Civil cases are taken from the district court to the supreme court or the court of appeals by petition in error filed in the court to which the same is taken, upon which a summons in error is issued. Where the amount involved does not exceed $100, no appeal from the district court can be taken. The courts of appeals have jurisdiction of appeals where the amount involved does not exceed $2,000, exclusive of interest and costs. The supreme court has exclusive jurisdiction in appeals when the amount exceeds that.

Arbitrations. Persons having controversies may submit them to the arbitration of any person or persons mutually agreed upon and may make such submission a rule of any court of record in the State. The parties may enter into arbitration bonds conditioned for the faithful performance of the award.

Assignments and Insolvency. Assignments must be for the benefit of all creditors and only discharge the debtor to the amount of payments made. The assignment must be executed, acknowledged, and recorded like conveyances of real property; and within thirty days thereafter a verified inventory of the property and effects assigned must be filed in the office of the clerk of the district court of the county in which the assignor resides. A schedule of liabilities and with the name of the creditors, the amount and character of their debts, and their address so far as the same shall be known to the assignor, verified by his affidavit, shall be filed on the date of the execution of the assignment in the office of such clerk. The clerk, within two days thereafter, shall mail to each creditor, whose demand exceeds $10, a notice of such assignment, name of the assignor, date of assignment, name of assignee, and names of all creditors and amounts as stated in such schedule; and shall name a day, not less than twenty nor more than thirty days from the date of assignment, on which creditors shall convene at his office and choose an assignee. Until such choice is made the assignee named in the assignment remains in possession and control. If a majority in interest of the creditors whose debts exceed $10 are present at the meeting, an assignee may be chosen by those representing the greater part in value and number. If the creditors fail to elect an assignee the judge of the district court appoints. The assignee shall appoint a day within six months after the date of the assignment, when he will proceed publicly to adjust and allow demands against the estate; and he shall give notice of such time and place by advertisement, published in some newspaper printed in the county, for three months, the last insertion to be at least four weeks before the appointed day, and shall also give notice by letter addressed to the creditors whose address is known. The assignee shall require evidence of the justice of such demands, and appeals may be taken from the decision of the assignee. No preferences are allowed.

Attachment. At or after the commencement of an action an attachment may be had by plaintiff. The affidavit of the plaintiff, his agent, or attorney must be filed, stating the nature of the claim, that it is just, the amount affiant believes ought to be recovered, and the existence of some one or more of the following grounds: 1. That defendant is a foreign corporation or a non-resident of the State (but in this case for no other claim than a demand arising upon contract, judgment, or decree, unless the cause of action arose wholly within the limits of the State). 2. That the defendant absconded with the intention to defraud his creditors. 3. That the defendant has left the county of his residence to avoid a service of summons. 4. That he so concealed himself that summons can not be served upon him. 5. That he is about to remove his property or a part thereof out of the jurisdiction of the court with the intent to defraud his creditors. 6. That he is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors. 7. He has property or rights in action which he conceals. 8. Has assigned, removed, or disposed of, or is about to dispose of his property, or a part thereof, with the intent to defraud, hinder, or delay his creditors. 9. Or fraudulently contracted or incurred the debt on which the suit is brought. 10. Or that the suit is brought for damages from the commission of some felony or misdemeanor. 11. Or that the debtor has failed to pay for any article or thing delivered for which by contract he was bound to pay upon delivery. On 5th, 6th, and 8th an action may be brought and attachment had before the debt is due, but an order of the judge is necessary before the attachment issues. Attachment orders may issue to different counties and bond must be given to be approved by the clerk, except where the defendants are non-residents or foreign corporations. *(See Garnishment.)*

Banks and Banking. There is no constitutional provision relating to banks, except banks of issue. Other banks are organized under a general act. The charter, in addition to the requirements of the law relating to corporations, shall contain the names and places of residence of the stockholders and the amount of stock subscribed by each, and may contain such other provisions, not inconsistent with law, as the stockholders may deem proper, and shall be subscribed by at least five of the stockholders of the proposed bank who are residents of the State of Kansas. Board of directors shall be not less than five, nor more than thirteen, a majority of whom shall be residents of Kansas. The word "State" shall be included in the title. The full amount of the capital stock must be subscribed before the charter is filed. The bank shall transact no business, except the election of officers, the taking and approving of their official bonds, and the receipts of payments on account of subscriptions to its capital stock, until it has been authorized by the Bank Commissioner to commence business. The capital stock must be paid, in full, in cash and shall not be less than $5,000. No bank shall employ its money directly or indirectly in trade or commerce by buying and selling goods, chattels, wares, and merchandise, and shall not invest in the stock of any bank or corporation, nor make any loans on the security of the shares of its own capital, nor be the purchaser or holder of any such shares, except to prevent loss upon a debt previously contracted in good faith. All such property coming into the possession of the bank in the collection of debts shall not be considered assets after the expiration of six months. Banks must have on hand in available funds the following sums: In cities having less than 5,000 population, 20 per cent of their deposits; in cities having over 5,000 population, 25 per cent, one-half of which may consist of balances due from good solvent banks located at commercial centers and at such other points as the Bank Commissioner may approve. The other half shall consist of actual cash. Officers are personally liable for paying overdrafts. Not more than 15 per cent of the capital stock and surplus can be loaned to any one person, company, or corporation. Penalties are provided for false statements and for receiving deposits when the bank is in a failing condition. Private banks are subject to the provisions of the law. The Bank Commissioner, or deputy, must make examination of each bank at least once a year. Four reports per annum are required, and the commissioner may call for others. Banks may purchase, hold, and convey real estate under certain conditions to the extent of 50 per cent of their paid-up capital. Shareholders are liable for a sum equal to the par value of stock owned and no more.

Bills of Exchange. *(See Notes and Bills.)*

Bills of Lading. These are governed by the common law.

Chattel Mortgages. Every chattel mortgage or conveyance intended to operate as such, which shall not be accompanied by an immediate delivery and followed by an actual and continued change of possession of the thing mortgaged, shall be absolutely void as against the creditors of the mortgagor and subsequent purchasers and mortgagees in good faith, unless the mortgage or a true copy thereof shall be filed in the office of the register of deeds in the county where the property is at the time, or the mortgagor shall at the time be a resident. And every such mortgage shall be void as against the creditors of the mortgagors or subsequent purchasers or mortgagees in good faith after the expiration of one year after same was filed, unless within thirty days next preceding the expiration of said year, and each year thereafter the mortgagee, his agent, or attorney, shall make an affidavit exhibiting the interest of the mortgagee in the property at that time, and the amount yet due thereon. But such affidavit may be filed any time if no purchase or lien in good faith has intervened, or the mortgagee after the year and without affidavit may secure himself by taking possession. Such affidavit shall be attached to and filed with the original mortgage. There is no stipulated time in which mortgage is to be foreclosed. A mortgagee of chattels, after condition broken, may sell on ten days' notice by posted hand-bills. Or, if the mortgage so provides, he may sell at private sale; or if the mortgagee has taken possession (as authorized to do at any time), the mortgagor or a subsequent mortgagee may demand sale on notice as above.

Collaterals. Governed by the common law on Bailments and Pledge.

Conditional Sales. Conditional contracts, by which the ownership remains in the party proposing to sell until the purchase price is paid, are treated as chattel mortgages and must be filed in the office of the register of deeds in the same manner as such chattel mortgages.

Contracts. All contracts which, by the common law, are joint only, shall be construed to be joint and several. The use of private seals in written contracts (except seals of corporations) is abolished.

Conveyances. *(See Deeds.)*

Corporations. Corporations are formed under a general statute, but there are separate provisions regulating the different kinds of corporations and to some extent the requirements of their organization. Prospective corporations must apply to the Charter Board, composed of the Attorney General, the Secretary of State, and the State Bank Commissioner, for a charter. A $25 application fee must accompany an application. When charter is granted a charter fee is paid proportional to varying amounts of authorized capital stock ranging from one-tenth of one per cent of its authorized capital stock upon the first $100,000 to $100 upon $1,000,000, and fees for filing, recording, etc. Any increase of capital stock pays a fee of one-tenth of one per cent of the amount of such increase and the same fees for filing, recording, etc., as before provided. The application for a charter must state: 1. The name desired for such corporation. 2. The place where its principal office or place of business is to be located. 3. The length of time for which such corporation is to exist. 4. The full nature and character of the business in which it proposes to engage. 5. The names and addresses of the proposed incorporators. 6. The proposed amount of capital stock. The charter when issued must state: 1. The

name of the corporation. 2. The purposes for which it is formed. 3. The place or places where its business is to be transacted. 4. The term for which it is to exist. 5. The number of its directors or trustees and the names and residences of those who are appointed for the first year. 6. The amount of its capital stock, if any, and the number of shares into which it is divided. 7. The names and addresses of the stockholders and the number of shares held by each. The persons signing the charter must acknowledge the execution of the same in the same manner as the execution of a deed is acknowledged, and the same is then filed with the Secretary of State, and the organization of the corporation dates from the date of filing. Every corporation must commence active operations within one year after filing its charter with the Secretary of State; failure to do so works its dissolution. No corporation can commence business until it file with the Secretary of State an affidavit made by its president and secretary setting forth that not less than 20 per cent of its capital stock has been paid in actual cash. The name adopted must indicate the nature of the business. The corporate name must begin with the word "the" and end with the word "corporation," "company," "association," or "society," but this does not apply to banks, benevolent or religious societies. There must be at least five directors, three of whom must be residents of the State. There is no requirement of the number of shares a person must hold to qualify him as a director. The treasurer is required to have an office in the State. The annual meeting of the stockholders for the election of directors must be held within the State, but the directors may hold meetings at such places as they desire. The annual statement shall be made by the president and secretary or the managing officer of each corporation for profit doing business in Kansas, excepting banking, insurance, and railroad corporations, on or before the first day of August of each year, showing a complete detailed statement of the condition of such corporation, on the thirtieth day of June. The statement shall set forth and exhibit: 1. The authorized capital stock. 2. The paid-up capital stock. 3. The par value and the market value per share of said stock. 4. A complete and detailed statement of the assets and liabilities of the corporation. 5. A complete and detailed statement of the receipts and expenditures of the corporation for the year next preceding. 6. A full and complete list of the stockholders, with the post-office addresses of each and the number of shares held and paid for by each. 7. The names and post-office addresses of the officers, trustees or directors, and manager elected for the ensuing year, together with a certificate of the time and manner in which such election was held; also to file with the Secretary of State as soon as any transfer, sale, or change of ownership of any of the corporation stock is made as shown upon the books of the company, giving the name and shares of the new stockholder or stockholders, the number of shares so transferred, and the par value and the amount paid on such stock. No action can be maintained or recovery had in any of the courts of the State by any corporation doing business in the State without first obtaining the certificate of the Secretary of State that the statements provided for in this section have been properly made. The capital stock can be increased to an amount not exceeding three times the original amount fixed in the charter. Preferred stock can be issued if all the holders of common stock consent. Dividends can not be declared from any source other than that which results from profits. The corporation can borrow money not to exceed the amount of its capital stock. Stockholders are liable for debts of the corporation to the extent of any amount unpaid on their original subscription and an additional amount equal to the par value of their stock. This applies to all corporations except railroads, religious and benevolent societies. Suits may be brought by and against corporations the same as individuals with the exception noted above. There are laws regulating banks, insurance companies, railroads, and other such corporations, and also regulating more in detail the manner in which corporations organized under the laws of other States may do business within this State.

Courts. *Terms and Jurisdiction.* District courts, holding two to three terms a year in every county, have general original jurisdiction in law and equity. Regular terms of the probate court are held in each county on the first Monday in January, April, July, and October, and special or adjourned terms may be held as business may require. Justice's jurisdiction in civil actions for the recovery of money, $300; to recover specific personal property, $100. There are courts of appeals and the supreme court, which latter is the court of last resort. (*See Appeals.*)

Days of Grace. (*See Notes, etc.*)

Deeds. No particular forms of conveyances are prescribed, but the following are provided for: A conveyance in substance; A B conveys and warrants to C D (here describe premises) for the sum of (here insert the consideration), being dated, signed, and acknowledged by the grantor, is declared by statute to be a conveyance in fee simple, with covenants from the grantor for himself, his heirs and personal representatives, that he is lawfully seized of the premises, has full right to convey the same, and guarantees the quiet possession thereof, that the same are free from all incumbrances, and he will warrant and defend the same against all lawful claims. A conveyance in substance: A B quit-claims to C D (here describe premises) for the sum of (here insert the consideration), being duly signed and acknowledged by the grantor, is a good and sufficient conveyance in quit-claim. The same rule holds in regard to mortgages. As between the parties conveyances are valid without being recorded. The wife should join with her husband in the conveyance, and any conveyance or mortgage of the homestead without her uniting in the same is absolutely void. If the wife has never resided in the State her signature is not necessary. Powers of attorney to convey land must be acknowledged and recorded the same as deeds. Grantors need not attach any seal or scroll to their signatures, and no witnesses are necessary unless grantors are unable to write. Corporations convey by deed, sealed with the corporate seal and signed by president, vice-president, presiding member, or trustee. The acknowledgment must be before a judge or clerk of the district court having a seal, a justice of the peace, notary public, county clerk, register of deeds, mayor or clerk of an incorporated city. Every notary public shall add to his official signature the date of the expiration of his commission as notary public. In cases where the acknowledgment is made out of the State it must be made before a court of record, a clerk, or other officer having the seal thereof, a commissioner of deeds for Kansas, justice of the peace or notary public, or before any consul of the United States resident in any foreign country or port. When the acknowledgment is made before a justice of the peace, a clerk of a court of record must certify to his official position. All instruments of writing for conveyances or incumbrances of real estate in this State executed and acknowledged or approved in any other State, Territory, or country in conformity with the laws of such State, Territory, or country, or in conformity with the laws of this State, are as valid as if executed within this State. If the deed is executed by a corporation, the president or other person executing the same should acknowledge it, and the officer should certify that he was personally known to be the president of such corporation, and that he acknowledged the execution of the instrument for and on behalf of the corporation for the purposes therein expressed. Deeds and mortgages must be recorded in the office of the register of deeds of the county in which the land is situated, or they will be void as to subsequent grantees in good faith without notice.

Deeds of Trust in the nature of mortgages are not used so far as sale by the trustee is concerned. (*See Trusts, etc.*)

Depositions. Depositions are taken upon notice to the opposite party. The notice must be served so as to allow the adverse party sufficient time to attend, and one day for preparation, exclusive of Sunday and the day of service. Courts are also authorized to appoint commissioners to take depositions. The deposition may be taken by stating the facts in narrative form, or in reply to questions. The depositions may be taken before any person authorized to take acknowledgments, such officer not to be attorney or relative of either party, nor otherwise interested in the event of the suit. If there are adjournments, they shall be noted by the officer, and legal reasons therefor given. Objections should be entered to witnesses supposed to be interested, and to questions supposed to be illegal. This entry is made on behalf of the party raising the objection, simply by a short note made by the magistrate or officer taking the depositions. Each witness must sign his own deposition. The notice must be attached to the depositions and inclosed with them. The depositions should be commenced on the day named, and some portion of a deposition taken on each successive day, Sundays and national holidays not being regarded. When depositions are taken under an agreement, the above instructions will be followed, except where they are modified by the agreement. It should be attached to the depositions, if sent, and referred to in the caption, as the notice is, when taken under a notice. If taken by interrogatories and cross-interrogatories, under agreement or otherwise, each interrogatory and cross-interrogatory must be put to each witness and answered so far as he can answer it, and the answer written down. The deposition must show that each interrogatory and cross-interrogatory was thus put and answered. If the depositions are taken before the mayor, notary public, or commissioner appointed as aforesaid, they must be certified under his official seal. If before any of the other officers above named, a certificate must be annexed, under the seal of the court of the county, or the great seal of the State, that the officer by whom the depositions were taken was, at the time of taking the same, such officer as he represents himself to be in his certificate. This should be attached to the magistrate's certificate. This proof of official character is omitted when waived by agreement of parties at the foot of notice. The whole should be sealed up by the magistrate, the title of the suit indorsed on the outside, the name and official character of the officer taking the same, and "depositions on behalf" (the party taking the same) and addressed to the "clerk of the ..... at ..... Kansas," or ".....," justice of the peace, at ....," as the case may be. The officer before whom the depositions are taken should indorse across the back of the envelope, "These depositions taken before, sealed up, and addressed by me," and sign his name officially thereto. (*See Testimony.*)

Descent and Distribution. The homestead is the absolute property of the widow and children—one-half in value to the widow, and the other half to the children, when both survive. The homestead can not be divided or sold by an action for partition until all the children attain majority. One-half of all real estate owned by husband during coverture, and not conveyed by husband and wife, nor sold at judicial sale, and not necessary to pay debts goes to the wife in fee simple; except of land sold by husband whose wife never resided in the State. Remaining estate goes to the surviving children, and heirs of deceased children, children taking per stirpes, in equal shares, or, if none, to the widow. For want of wife or child the whole estate goes to the parents. The rules applicable to widow of deceased husband apply to husband of deceased wife. Illegitimate children inherit from the mother, and also from the father, if his recognition has been general and notorious, or in writing. When a child would inherit from either parent, such parent will inherit from the child. Personal property descends in the same way as real estate. (*See Exemptions.*)

Divorce. Divorces are only granted by district court for the following causes: Former marriage; one year's abandonment; adultery; impotency; pregnancy of wife by other than her husband; extreme cruelty; fraudulent contract; habitual drunkenness; gross neglect of duty; conviction of felony; and an action may be commenced to declare the marriage void for want of capacity of understanding of the parties. The plaintiff must have resided in the State one year, and sue in the county of residence. In case of service by publication, a certified copy of petition and notice, within three days after first publication, must be mailed to the defendant, and such service must be proved by affidavit, or the plaintiff must make affidavit that the residence of the defendant is unknown. Each party may testify. The wife's name may be changed and the custody of children awarded to her. A decree of alimony has the same effect, and may be enforced as any other money judgment. Divorce is no bar to future marriage. Proceedings to reverse decree of divorce must be commenced within six months after its rendition, during which time it is bigamy for either party to marry. Alimony may be sued for without divorce.

Dower. Dower is abolished by law. (*See Descent.*)

Executions may be ordered as soon as judgment is obtained. It is the duty of the justice, without any order, to issue execution within ten days from rendition of judgment. Personal property levied on must be appraised, and advertised for ten days, and sold at auction to the highest bidder. There is no stay of execution in the district court, except where a case is taken to the supreme court on appeal, and then only upon the giving of proper bonds. In justice's courts, by filing bond, stays of execution are granted as follows: On any judgment for $20 and under, thirty days; over $20 and under $50, sixty days; over $50 and not exceeding $100, ninety days; over $100, one hundred and twenty days. The Legislature of 1893 enacted a law providing for the redemption of real estate sold on execution or order of sale, giving the debtor eighteen months in which to redeem. It provides that where there are several creditors, that after the sale the debtor shall have twelve months, and if he fails to redeem, then creditors may redeem from each other for three months. The debtor is entitled to possession of the property during the period provided for redemption, and no receiver can be appointed unless he commits waste. Any contract waiving a right of redemption is invalid. This law does not apply to contracts in existence at the time the law took effect.

Exemptions. Homestead of 160 acres of farming land, or of one acre within an incorporated town or city, with buildings thereon, unlimited in value. Every person residing in this State, and being the head of a family, shall have exempt from seizure upon attachment or execution, or other process: Family Bible, school books, and family library; family pictures and musical instruments used by the family; all wearing apparel of the family, all beds, bedsteads and bedding, one cooking stove and appendages, and all other cooking utensils, and all other stoves and appendages necessary for the use of the debtor and his family; one sewing machine, spinning wheel, and all other implements of industry, and all other household furniture not herein enumerated, not exceeding $500; two cows, ten hogs, one yoke of oxen and one horse or mule, or in lieu of one yoke of oxen and one horse or mule, a span of horses or mules, and twenty sheep and their wool; necessary food for the support of such stock for one year; one wagon, two plows, drag

and other farming utensils, not exceeding $300; grain, meat, vegetables, groceries, etc., for the family for one year; the tools and implements of any mechanic, miner, or other person, kept for the purpose of carrying on his business, and in addition thereto stock-in-trade not exceeding $400 in value; library, implements, and office furniture of any professional man. Also personal earnings of the debtor earned during three months preceding the garnishment or attachment, and three months' pension money, where such earnings or pension money is necessary for the support of the debtor's family. A lien on the homestead may be created by husband and wife joining in the mortgage, also for material used in improvements thereon. Residents, not the head of a family, have tools, implements, and stock-in-trade up to $400 exempt from execution.

Fraud. (*See Attachments, Arrest, and Assignments.*)

Garnishment. At or after the time of beginning an action to recover damages founded upon contract, judgment or decree, or after the issuance of an execution and before it is returned, if the plaintiff cause to be filed with the clerk an affidavit stating the amount of his claim over and above all offsets, that he believes that some person, naming him, indebted to, or has property in his possession or under his control belonging to the defendant, and that such defendant has no property liable to execution sufficient to satisfy his debt, and that the indebtedness or property so held is not by law exempt from seizure or sale upon execution, the clerk shall issue a garnishment summons. The plaintiff is required to give a bond in a sum not exceeding double the amount of the claim to the effect that he will pay all damages sustained by reason of such garnishment if the order be wrongfully obtained. This bond is not required where the defendant is a non resident of the State or a foreign corporation. The defendant may, by giving bond, have the garnishee released. If the answer of the garnishee is not satisfactory, the plaintiff may contest the same. In the justice court, garnishment may be issued in the beginning of the action if the affidavit shows that the plaintiff is liable to lose his claim unless the garnishment is issued.

Holidays. State holidays are February 22d, Decoration day (May 30th), and Labor day (the first Monday in September), and the day designated as Thanksgiving. (*See Notes and Bills of Exchange.*) All National holidays, including Christmas and New Year's, are recognized.

Husband and Wife. (*See Married Women.*)

Interest. Legal rate, 6 per cent, but 10 per cent may be agreed upon. Excess of 10 per cent is forfeited, and in addition thereto there shall be deducted from the amount due for principal, with lawful interest, an amount equal to the interest contracted for in excess of 10 per cent. The legal interest originally contracted for continues until the debt is paid, and no additional interest can be charged by way of penalty for default. A purchaser of a negotiable note for value before maturity, without notice, takes the note free of the usurious taint.

Judgments. Judgments of courts of record are liens on the real estate of the debtor within the county from the first day of the term at which the judgment was rendered; but judgments by confession and judgments rendered at the same term during which the action was commenced are liens only from the day on which the judgment was rendered. Judgments lose their priority over subsequent judgments unless execution is issued and levied within one year after judgment. A certified copy of the judgment may be filed in the office of the clerk of the district court of any other county and the judgment will then be a lien on real estate in that county, but execution can only issue from the court in which the judgment is rendered. The lien continues for five years and may be revived within one year thereafter, but the issuance of an execution prevents the judgment becoming dormant until the expiration of five years from the date of issue. The judgments of justices become liens upon real estate of the debtor by filing a transcript in the district court. Judgments are taxable at the place where rendered without regard to the residence of the judgment creditor. (Act of 1897.)

Limitations of Suits. An action for the recovery of real property, sold on execution or by executors, administrators, or guardians, brought by the execution debtor, or the heirs, ward, or guardian, or any claiming under them after the date of the judgment or order of sale, must be within five years after the deed is recorded. To recover by holder of tax deed within two years, and against holder of tax deed within five years after recording of tax deed. Other actions for recovery of real property, within fifteen years after cause of action accrues. On official bonds and contracts in writing, five years. Contracts not in writing, three years. Trespass, detinue, replevin, injuries not arising on contract, and relief on the ground of fraud, two years. Action for libel, slander, malicious transaction, or false imprisonment upon a suit for penalty or forfeiture, except where the statute enclosing it describes a different limitation, one year. Action for any other relief not before provided for, five years. Any agreement for a different time for the commencement of actions from the time mentioned is void. The time during which any defendant has been absent from the State, or has absconded or concealed himself, is not to be computed as any part of the period of limitation. If the cause of action arose in another State between non-residents of this State, and by the laws of the State where the action arose the action is barred, it is barred in this State. Any case founded on contract, part payment, or a written acknowledgment or promise, renews the contract. The statute runs from the date of such renewal.

Married Women. The real and personal property owned by a woman at the time of her marriage, and any property which comes to her by descent, devise, or bequest, or gift of any person except her husband, remains her sole and separate property notwithstanding her marriage, and is not subject to the disposal of her husband or liable for his debts. Married women may sell and convey their real and personal property and enter into any contract with regard to the same in the same manner and to the same extent as a married man may in relation to his property. She may sue and be sued in the same manner as if she were single. She may carry on any trade or business, perform labor or services for her separate account, and her earnings or proceeds from labor, trade, or business remain her separate property, and may be used and invested by her in her own name.

Mortgages. A mortgage of real estate, to be valid as against subsequent bona fide purchasers, must be duly acknowledged and recorded in the office of the register of deeds of the county where the land is situated. Mortgages may be discharged on margin of record by mortgagee or attorney or assignee in presence of register, or by satisfaction entered on the instrument when copied on the margin by the register; or by an independent release duly acknowledged and recorded. Wife must join in all mortgages except those for purchase money. Mortgages are foreclosed by suit only. By an act of the Legislature which took effect May 18, 1893, real estate sold under foreclosure of mortgage is subject to eighteen months redemption. This act does not apply to mortgages executed prior to the date the act took effect. When a mortgage is assigned the assignment should be acknowledged and recorded. If the assignment was executed prior to March 15, 1899, it can be recorded whether acknowledged or not, and under the law must be recorded within four months from that date or payment to the recent owner of the mortgage will be a complete defense to an action thereon. (For Forms, see *Deeds;* see *Executions.*)

(For Mortgages on Chattels, see *Chattel Mortgages;* see *Executions.*)

Notes and Bills of Exchange. All bonds, notes, and bills of exchange, except bank checks and sight drafts, made negotiable, shall be entitled to three days of grace in the time of payment. All bonds, notes, and bills of exchange, foreign and inland, drawn for any sum or sums of money, certain, and made payable to any person or order, or to any person or bearer, shall be negotiable by indorsement thereon if payable to order, and by delivery if payable to bearer, so as to absolutely transfer and vest the property thereof in each and every indorsee or holder, successively; any such bond, note, or bill of exchange, drawn payable to any person or persons alone, and not drawn payable to any order, bearer, or assigns is not negotiable. No person residing or doing business within the limits of this State can be held liable for protest damages on any bond, note, or bill protested for non-acceptance or non-payment. Whenever the third day of grace falls upon a Sunday, or thanksgiving, or any State or national holiday, the next preceding day is the last day of grace. By act of 1893 a provision in note, bond, or mortgage making amount payable in gold is void.

Power of Attorney. (*See Deeds.*)

Probate Law. (*See Administration.*)

Protest. (*See Notes and Bills.*)

Replevin. The plaintiff in an action to recover the possession of specific personal property may claim the immediate delivery of the same by filing affidavit and giving bond. Property replevined must be held by the officer taking it twenty-four hours, during which time the party from whom the property is taken may give bond to the plaintiff for not less than double the amount of the value thereof conditioned for the return of the same or its value in case it shall be adjudged the plaintiff is entitled thereto, and thereupon may have the property returned to him.

Suits. (*See Actions.*)

Taxes. Taxes upon personal property are based upon an assessment made each year. Real estate is assessed for taxation every two years; one-half the annual levy for taxes becomes due December 20, and if not paid the whole amount becomes due and there is a penalty of five per cent added. If the whole amount is paid there is a rebate of 5 per cent on the last half. If not paid by June 20 of the succeeding year, another 5 per cent penalty is added. If the first half of the taxes on personal property is not paid on or before December 20, a tax warrant is issued to the sheriff for its collection in January. When the tax upon real estate is delinquent, it is sold for taxes on the first Tuesday in September following. After sold it bears interest at the rate of 15 per cent per annum and the same rate upon subsequent taxes paid and indorsed on the tax certificate. The tax lien attaches to real estate on November 1, in the year in which the tax is levied. After land is sold for taxes, it may be redeemed within three years from date of sale. The interest of a minor may be redeemed at any time within one year after he attains his majority, and idiots and insane persons may redeem within five years after the sale. If land is not redeemed within three years after the sale, the county clerk may, upon the surrender of the certificate at any time within one year thereafter, execute a tax deed conveying the premises.

Testimony. No person is disqualified as a witness, in either civil or criminal cases, by reason of his being a party to, or interested in, the event of the action, or on account of any religious belief, or by reason of his conviction of a crime. No party will be allowed to testify in his own behalf in respect to any transaction or communication had personally by such party with a deceased person, when the adverse party is the executor, administrator, heir at law, next of kin, surviving partner, or assignee of such deceased person, when they have acquired title to the cause of action immediately from such deceased person; or of transactions when the other party thereto is deceased; or of transactions with a deceased partner or joint contractor in the absence of his surviving partner or joint contractor; in all cases, however, when the deceased's deposition has been taken, and is used on the trial, the adverse party may testify. The following persons are incompetent to testify: Persons of unsound mind; children under ten years of age, except in the discretion of the court; husband and wife for or against each other, except in cases of agency or joint interest, but in no case concerning communications made during marriage; nor an attorney, clergyman, or physician, with reference to confidential communications made to them, unless the party offers himself as a witness, in which case the communications to such attorney, clergyman, or physician on the same subject are admissible.

Transfer of Corporation Stocks. Stock is transferable only on the books of the corporation in such manner as the by-laws may prescribe. The stockholder can only vote on stock which has been standing in his name on the books of the company thirty days prior to the election. Shares can not be transferred until all previous assessments have been paid.

Trusts and Powers. All trusts concerning lands must be created in writing except such as arise by implication of law, and no trust, whether implied or created, can defeat the title of a purchaser for a valuable consideration without notice. All instruments creating trusts, duly executed and acknowledged, may be recorded in the office of the register of deeds of the county where the land is situated, and the record of such trust shall be deemed actual notice to all persons claiming under a conveyance made after the recording of the trust deed. A party paying money to a trustee in good faith is not responsible for the application of the money so paid. Nor can any fraudulent application of the money by the trustee affect the title of such a purchaser. No trust results to one paying the consideration for a conveyance to another except in favor of creditors or in case of fraud. A dry or passive trust passes the title directly to the beneficiary.

Warehouse Receipts. Warehouse receipts shall not be issued unless the property therein described has been bona fide received into store and shall be in store at the time of issuing the receipt. No person shall sell, encumber, ship, transfer, or in any manner remove beyond his immediate control any property for which a receipt has been given as aforesaid, without the written assent of the person holding such receipt. Receipts for grain issued by any warehouse are negotiable by indorsement in blank or by special endorsement in the same manner and to the same extent as bills of exchange and promissory notes. Violation of the provisions of the act is a felony.

Wills. Any person of full age and sound mind and memory, having an interest in real or personal property, may give and devise the same to any person by last will and testament lawfully executed, subject, nevertheless, to the rights of creditors. Wills must be in writing, signed at the *end* by the testator, or another in his presence and by his express direction, and subscribed in his presence by two or more competent witnesses who saw him subscribe or heard him acknowledge it. Compliance with these requirements should appear in the witnessing clause. A will executed, proved, and allowed in another State, according to the laws of that State, relative to property in this State, may be admitted to record in the probate court of the county in which such property is situated, by producing an authenticated copy. Every will, when admitted to probate, shall be filed in the office of the probate court, and recorded.

SYNOPSIS OF THE LAWS OF KENTUCKY

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by ERNEST MACPHERSON, Esq., Attorney at Law, Louisville. (*See Card in Attorneys' List.*)

Acknowledgments. Deeds executed within the State must be acknowledged before the clerk of the county court or a notary public. Deeds other than those of married women may also be acknowledged before and proven by two witnesses. Deeds executed without the State and within the United States must be acknowledged before the clerk of a court or his deputy, notary public, mayor of a city, secretary of State, commissioner of deeds, or judge of a court. Deeds executed without the United States must be acknowledged before a foreign minister, consul, or secretary of legation of the United States, or the secretary of foreign affairs, or judge of a superior court of the nation where the deed shall be executed, attested in either case by the officer's seal of office. When the acknowledgment is taken by an officer of this State he shall simply certify that the deed was acknowledged before him, and when it was done. When the acknowledgment is taken by an officer residing out of this State it must be certified in effect as follows:

State of ..... } SCT.
County ..... }

I ..... do certify that this instrument of writing from ..... and ..... his wife, was this day produced to me by the parties, and acknowledged and delivered by ..... and ..... his wife, parties thereto, to be their act and deed, and the contents and effect of the instrument being explained to the said ..... by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed, and consented that the same might be recorded.

Given under my hand and seal of office this ..... day of .....19....

Actions. Actions are commenced by filing in the clerk's office of the proper court a petition setting forth the cause of action and causing a summons or a warning order to be issued thereon. Non-residents and corporations, other than banks, created by laws of this State, are required to give security for costs.

Administration of Estates. Personal estates of deceased persons must be administered by the executors named in the will, or if these refuse to qualify, or none are named, then by an administrator appointed by the county court of the county in which the decedent resided at the time of his death. Administrators and executors, unless otherwise directed by the will, are required to give bond for the faithful performance of their duties. They are required to file an inventory of the estate within three months and to make settlement within two years from the date of qualification.

Affidavits. An affidavit may be read to verify a pleading, to prove the service of a summons, notice, or other process, in an action; to obtain a provisional remedy, an examination of a witness, a stay of proceedings or a warning order; or, upon a motion. An affidavit may be made: 1. In this State, before a judge of a court, or a justice of the peace, notary public, clerk of a court, or master-commissioner. 2. Out of this State, before a commissioner appointed by the governor of this State; or before any other person empowered by a commission directed to him by consent of the parties or by order of the court; or before a judge of a court, a justice of the peace, a mayor of a city, or notary public.

Appeals. Appeals may be taken from a justice's court to the quarterly court when the value in controversy, exclusive of interest and costs, exceeds $10; from the quarterly court to the circuit court when the value in controversy, exclusive of interest and costs, exceeds $25; from the county court to the circuit court when the value in controversy, exclusive of interest and costs, exceeds $50; from the circuit court to the court of appeals when the value in controversy, exclusive of interest and costs, amounts to $200 or more. No appeal lies to the court of appeals from any judgment of a quarterly, city, police, fiscal or justice's court, nor from any judgment of the county court except in actions for the division of land and allotment of dower.

Arbitration. All controversies which might be the subject of a suit may be submitted to the decision of one or more arbitrators, or two and their umpire. The submission may be in writing or by entry of record, and the agreement of submission shall be binding on the parties thereto, if it states the matter to be submitted and who are to be the arbitrators. Each arbitrator and the umpire, if one be chosen, shall take an oath to decide the matter in controversy fairly and impartially according to law, justice, and the equity of the whole case. The award must be in writing signed by each arbitrator and the umpire, if any, and shall be a final settlement of the controversy between the parties. A copy of the award must be given within a reasonable time and shall be binding upon both.

Arrest. An order for the arrest of the defendent shall be made by the court in which the action is brought or pending, at its commencement, or at any time before judgment, if an affidavit of the plaintiff be filed in his office showing: 1. The nature of plaintiff's claim. 2. That it is just. 3. The sum or value, which the affiant believes the plaintiff ought to recover. 4. That the affiant believes, either that the defendant is about to depart from this State and with intent to defraud his creditors has concealed, or moved from this State, his property, or so much thereof that the process of the court after judgment can not be executed; or that the defend ant has money, or securities for money, or evidences of debt, in the possession of himself, or of others for his use, and is about to depart from this State without leaving property therein sufficient to satisfy plaintiff's claim.

Assignments and Insolvency. *Subject to National Bankrupt Law.* Every voluntary assignment made by a debtor to any person in trust for his creditors shall be for the benefit of all the creditors of the assignor, in proportion to their respective claims, after the payment of the expenses of the trust; except that property conveyed by the deed of assignment, and upon which there is a valid lien, shall be applied first to the discharge of the lien debt; and except that debts due by the assignor as guardian, committee, trustee of an express trust created by deed or will, or as personal representative, shall be paid in full before the general creditors receive anything. The intent of the assignee in making the deed of assignment shall not invalidate the deed, unless he be solvent, and it appear that the assignment was made to hinder or delay creditors. The deed vests in the assignee the title to all the estate, real and personal, belonging to the assignor at the time of making the assignment, except that property exempt by law shall not pass unless embraced in the deed. If the assignor, before making the deed, shall have made a preferential or fraudulent transfer, conveyance, or gift of any of his property, or fraudulent purchase of any property in the name of another, the property so fraudulently transferred, conveyed, or purchased shall vest in the assignee, and it shall be his duty to institute such proceedings as may be necessary to recover same. If, upon demand, he refuses to do so, any creditor may, and the property so recovered shall become a part of the estate, and be distributed as other assets. If creditors representing one-half in number and two-thirds of the amount of debts against the estate shall so request in writing, the court shall remove the assignee and appoint another in his stead.

Attachments. The plaintiff in an action to recover money may obtain an attachment against: 1. A defendant who is a foreign corporation or a non-resident of the State. 2. Who has been absent therefrom four months. 3. Who has departed therefrom with intent to defraud his creditors. 4. Who has left the county of his residence to avoid the service of a summons. 5. Who so conceals himself that a summons can not be served upon him. 6. Who is about to remove or has removed his property or a material part thereof out of this State, not leaving enough therein to satisfy the plaintiff's claim, or the claims of said defendant's creditors. 7. Who has sold, conveyed, or otherwise disposed of his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat, hinder, or delay his creditors. 8. Who is about to sell, convey, or otherwise dispose of his property with such intent. (But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resident of this State, for any claim other than a debt or demand arising upon a contract, express or implied, or a judgment, or award.) Also in an action for the recovery of money due upon a contract, judgment, or award, if the defendant have no property in this State subject to execution, or not enough thereof to satisfy the plaintiff's demand, and the collection of the demand will be endangered by delay in obtaining judgment or a return of no property found. Also in an action to recover personal property which has been ordered to be delivered to plaintiff, and which property or part thereof, has been disposed of, concealed, or removed, so that the order for its delivery can not be executed by the sheriff. *Affidavit and Bond.* Before an attachment can be obtained an affidavit must be filed, showing: 1. The nature of plaintiff's claim. 2. That it is just. 3. The sum which affiant believes the plaintiff ought to recover. 4. The ground of attachment In an action upon a return of "nulla bona" no bond is required, but in all other cases bond must be given, with good surety, in double the amount of the claim.

Chattel Mortgages and Deeds of Trust. No deed of trust or mortgage, conveying a legal or equitable title to real or personal estate, shall be valid against a purchaser for a valuable consideration, without notice thereof or against creditors, until such deed shall be acknowledged or proved according to law, and lodged for record. It is a penal offense, punishable by fine and imprisonment, for any person to sell any personal property, on which there is a mortgage of record, with the intent to prevent the foreclosure of the mortgage and a sale of the property.

Contracts. A seal or scroll is in no case necessary to give effect to a deed or other writing. All unsealed writings stand upon the same footing with sealed writings, having the same force and effect, and the same actions may be founded upon them. The State or county seal, or the seal of a court, corporation, or notary to any writing has not, however, been dispensed with.

Conveyances. (*See Acknowledgments.*)

Corporations. By the constitution adopted September 28, 1891, the power to grant special charters to corporations is taken away from the legislature, which is required to enact general laws for the incorporation of companies. The constitution also repeals all existing charters under which business has not in good faith been commenced prior to September 28, 1891. The following is an outline of the provisions of an act which became a law April 5, 1893: Existing corporations are allowed to operate under their charters until September 28, 1897, when all provisions thereof inconsistent with the new act shall stand repealed, and thereafter the corporation shall be deemed to be organized under said act. Such corporations may also reorganize under the new act, or may amend their charters under it; but in the latter case it must first, by resolution of its board of directors, accept the provisions of the new constitution. All corporations are required to have a sign over their principal place of business, and on such sign and on all printed or advertising matters (except those of railroad, trust, and insurance companies, banks and building and loan associations) to cause to be painted or printed the word "Incorporated," under penalty of fine of not less than $100 nor more than $500. Any number of persons, not less than three, may become incorporated by signing and acknowledging articles of incorporation, specifying: 1. The name of the corporation. 2. Its principal place of business. 3. The nature of its business. 4. The amount of capital stock, if any, and number of shares. 5. Names, places of residence, and number of shares subscribed by each stockholder. 6. Date of commencement and of termination of corporate existence. 7. By what officers business is to be conducted, and time and place of election. 8. Highest amount of indebtedness or liability which corporation may incur. 9. Whether private property of stockholders, not subject by the provisions of the act to corporate debts, shall be liable therefor, and, if so, to what extent. Said articles shall be acknowledged and recorded like deeds in the county in which the principal place of business is situated, and a copy thereof filed and recorded in the office of the secretary of State. After such filing and recording, and the payment to the State of a license tax of one-tenth of 1 per cent on its capital stock, the corporation is deemed fully organized; but, before transacting any business other than with its own stockholders, at least 50 per cent of its stock must in good faith be subscribed, payable at such times as the board of directors may require. Stockholders are liable to creditors for their unpaid subscriptions, and to the extent of the par value of the stock in addition. From this double liability are excepted stockholders in the following classes of corporations, to wit: Charitable, benevolent, turnpike, bridge, railroad, telegraph, telephone, mining, waterway, water, gas, and salt companies. Corporation is forbidden to take a lien on or purchase its own stock, except to secure a past indebtedness, or to engage in any business other than that for which it was organized, or to hold real estate in excess of what is necessary for carrying on its business, for a longer time than five years, under penalty of escheat. Directors must not be less than three in number and each must own not less than three shares of stock. Elections must be by ballot and shall be held in this State. The first election must be held at a meeting held before the corporation commences business, and thereafter an election must be held annually on the day named in the by-laws, which must not be changed within sixty days of the election. Of any such change notice must be given to each stockholder twenty days before the election. Any corporation organized under this act may, by the consent in writing of a majority of its stockholders, unless otherwise provided in its charter, close its business. Notice of such closing must be published at least once a week for four consecutive weeks in some newspaper published in the county, and all debts must be paid in full before the officers receive anything. Corporations organized to carry on the business of banking, building and loan, trust, insurance, and railroading, are governed by special provisions of the act.

Courts. General civil and criminal jurisdiction is vested in circuit courts which hold terms in each county as provided by statute.

Days of Grace. There is no statute on this subject, and our courts hold that it is regulated by the custom of the place of payment. The custom generally prevailing in Kentucky is to allow three days of grace on all negotiable instruments.

Depositions. Proof may be taken by depositions in all equitable actions, and in ordinary or common law actions, where the witness resides twenty miles or more from the place where the court is held, or is absent from the State, and in many other cases enumerated in the statute where the witness is privileged. Depositions are taken either on notice to the opposite party or upon written interrogatories. The ordinary method of taking is upon notice, but where the place of taking is more than one day's travel by ordinary methods and more than one hundred miles from the place of sitting of the court, the party receiving notice may require the deposition to be taken upon interrogatories by giving notice to that effect to the adverse party or his attorney upon the same day, or the day following the one upon which the first notice was served. Except in divorce cases, depositions are required to be taken upon interrogatories, if all the parties against whom they are to be read have been constructively summoned and have not appeared, or be defendants, or under disability other than coverture or infancy and coverture combined. In several other cases enumerated in the civil code, the court may require depositions to be taken upon interrogatories, and they may always be so taken by consent of all parties. The officers authorized to take depositions in this State, to be used in its courts, are: An examiner appointed by the judge of the circuit court of his district, a judge or clerk of a court, a justice of peace, or a notary public. Depositions may be taken out of this State before a commissioner appointed by the governor of this State, or before a judge of a court, a justice of the peace, mayor of a city, notary public, or any other person empowered by a commission issued to him by consent of the parties or by order of the court. If the deposition is taken upon interrogatories neither party is allowed to be present, either in person or by agent or attorney. The officer's certificate must state when and where the deposition was taken; that the witness was duly sworn before giving it, and that it was written and subscribed by him in the officer's presence, or was written by the officer in the presence of the witness and read to and subscribed by the witness in the presence of the officer. The certificate must also state whether or not either of the parties, and, if either, which of them, was present in person or by agent or attorney during the examination of the witness. The officers may transmit the deposition in a sealed envelope addressed to the clerk of the court, with an endorsement showing the style of the action, and that the envelope contains depositions. This may be sent by mail or by private person, in which case the person must make oath that they have not been opened in transit.

Descent and Distribution of Property. The real estate of a person dying intestate shall descend in parcenary to his kindred, male and female, in the following order, viz: (1) To his children and their descendants; if none, then (2) to his father and mother equally if both be living; if either be dead, the whole estate descends to the one living; if both be dead, then (3) to his brothers and sisters and their descendants; if none, then (4) one moiety of the estate shall pass to the paternal and the other to the maternal kindred, in the following order: (5) to the grandfather and grandmother, or whichever may be living; if both are dead, then (6) to uncles and aunts and their decendants; if none, then (7) to great grandfather and great grandmother, and so on in other cases without end, passing to the nearest lineal ancestors and their descendants. (8) If there is no kindred to one of the parents, the whole shall go to the kindred of the other. If there is neither paternal nor maternal kindred, the whole shall go to the husband or wife of the intestate, or if he or she be dead, then to his or her kindred as if he or she had survived the intestate and died entitled to the estate. When any or all of a class first entitled to take are dead, leaving descendants such descendants shall take per stirpes, that is to say, by representation, the shares of their respective deceased parents. Collaterals of the half blood shall inherit only half so much as those of the whole blood. In making title by descent, it shall be no bar to a party that any ancestor, through whom he derives his descent from the intestate, is or has been an alien. Bastard can inherit in the descending line only from the mother and her kindred, and can transmit inheritance in the ascending line only to the mother and her kindred.

Divorce. A divorce may be granted for any of the following causes, to both husband and wife. 1. Such impotence or malformation as prevents sexual intercourse. 2. Living apart without any cohabitation for five consecutive years next before the application. Also, to the party not in fault, for the following causes: 1. Abandonment by one party of the other for one year. 2. Living in adultery with another man or woman. 3. Condemnation for felony in or out of this State. Concealment from the other party of any loathsome diseases existing at the time of marriage, or contracting such afterwards. 5. Force, duress, or fraud in obtaining the marriage. 6. Uniting with any religious society whose creed and rules require a renunciation of the marriage covenant, or forbid husband and wife from cohabiting. Also to the wife when not in like fault, for the following causes: 1. Confirmed habit of drunkenness on the part of the husband of not less than one year's duration, accompanied with a wasting of his estate, and without any suitable provision for the maintenance of his wife and children. 2. Habitually behaving toward her by the husband, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her, or to destroy permanently her peace and happiness. 3. Such cruel beating or injury, or attempt at injury, of the wife by the husband, as indicates an outrageous temper in him, or probable danger to her life, or great bodily injury, from her remaining with him. Also to the husband for the following causes: 1. Where the wife is pregnant by another man without the husband's knowledge at the time of marriage. 2. Adultery by the wife, or such lewd and lascivious behavior on her part as proves her to be unchaste, without actual proof of an act of adultery. 3. When not in like fault, for habitual drunkenness on the part of the wife of not less than one year's duration. A judgment of divorce authorizes either party to marry again. No petition for divorce shall be taken for confessed; the grounds alleged must be proved. Action for divorce must be brought in the county where the wife usually resides, if she has an actual residence in the State; if not, then in the county of the husband's residence. Before a party can obtain a divorce, he or she must have had an actual residence in this State for one year.

Dower. *(See Husband and Wife.)*

Executions. An execution may be issued upon a judgment at any time until the collection of it is barred by the statute of limitations, but no execution shall be issued on any judgment, unless ordered by the court, until after the expiration of ten days from the rendition thereof. An execution constitutes a lien on the property of the debtor from the time it reaches the hands of the proper officer. Except as hereinafter stated, any execution upon a judgment may be replevied for three months, at any time before a sale under the same, by the defendant giving to the officer an obligation (known as a replevin bond) payable to the plaintiff, with good surety for the amount thereof, including interest and costs. A judgment to enforce a lien can not be replevied. No replevy is allowed upon a judgment against any collecting officer, or attorney at law, or agent, for a delinquency or default in executing or fulfilling the duties of his office or place, or for failing to pay over money collected by him in such capacity, nor against a principal by his surety, nor upon a debt due by obligation having the force of a judgment, nor upon a judgment for specific property, or for the property or its value. Before a sale of land under an execution, the officer shall cause it to be appraised under oath by two disinterested, intelligent housekeepers of the county; and if the land so sold does not bring two-thirds of the valuation, the defendant and his representatives shall have the right to redeem the same within a year from the day of sale, by paying the purchaser or his representatives the original purchase money and ten per centum per annum interest thereon.

Exemptions. The following property is exempt from execution, attachment, distress or fee bill, namely: Two work beasts, or one work beast and one yoke of oxen, two plows and gear, one wagon and set of gear, or cart or dray; two axes, three hoes, one spade, one shovel, two cows and calves, beds, bedding, and furniture sufficient for family use; one loom and spinning wheel and pair of cards, all the spun yarn and manufactured cloth manufactured by the family necessary for family use; carpeting for all family rooms in use, one table, all books not to exceed $50 in value, two saddles and their appendages, two bridles, six chairs, or so many as shall not exceed $10 in value; one cradle, all the poultry on hand, ten head of sheep, not to exceed $25 in value; all wearing apparel, sufficient provisions, including breadstuff and animal food, to sustain the family for one year; if not on hand, other personal property, wages, money or growing crop, not to exceed $40 in value for each member of the family; provender suitable for live stock, if there be any such stock, not to exceed $70 in value, and if such provender be not on hand, such other property as shall not exceed such sum in value; all washing apparatus not to exceed $50 in value, one sewing machine, and all family portraits and pictures; one cooking stove and appendages, and other cooking utensils not to exceed in value $25. The tools of a mechanic, not exceeding $100 in value, are exempt. The libraries of ministers of the gospel; the professional libraries of lawyers; the professional libraries and instruments of physicians and surgeons, not exceeding $50 in value, are exempt. The wages not to exceed $50 of all persons who work for wages are exempt, except as to debts contracted for food, raiment, or houserent for the family. In addition to the personal property exempt from execution, etc., there is a homestead exemption of so much land, including the dwelling house and appurtenances owned by the debtor as shall not exceed in value $1,000. This exemption does not apply to debts or liabilities which existed prior to the purchase of the land, or the erection of the improvements thereon. Only those persons are entitled to exemptions who have families resident in this commonwealth. If the land exemption is claimed, they must also be housekeepers.

Holidays. The 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July, the 25th day of December of each year, and all days appointed by the president of the United States, or by the governor of this State, as days of fasting and thanksgiving are declared holidays, and shall be treated as Sunday. If any of those days named as holidays shall occur on Sunday, the next day thereafter shall be observed as a holiday.

Husband and Wife. By an act which took effect June 12, 1894, the following important changes were made in the common law of coverture which theretofore prevailed in Kentucky. Marriage gives to the husband during the life of the wife no interest in any of the wife's property. She has full power to contract and to bind herself and her property, except that she can not bind herself to answer for the debt, default, misdoing of another, except as to property set apart for that purpose by mortgage. She may sell and dispose of personal property as if unmarried, but may not sell or convey real estate unless her husband unites in the contract, or conveyance, unless empowered to do so by decree of court in case of insanity, conviction of felony, or abandonment by the husband. After the death of either husband or wife the survivor shall have a life estate in one-third of all the realty of which the decedent was seized in fee simple during the coverture unless such right shall have been forfeited or relinquished. Such survivor has also one-half the personalty of the decedent left after the payment of debts. Abandonment and living in adultery by either party, or divorce works a forfeiture of these rights.

Interest. The lawful rate of interest is 6 per centum per annum, and contracts for a greater rate are void as to the excess of interest.

Judgments. A judgment does not constitute a lien on property in this State. All judgments except for malicious prosecution, libel, slander, or injury to the person, bear interest from their dates. *(See Executions and Limitations.)*

Limitations. The following are the periods within which actions must be brought, the time commencing to run from the accrual of the cause of action. Fifteen years: Actions to recover real property; actions upon judgments and written contracts, except negotiable instruments. Seven years: Actions by senior patentees against junior patentees, who have held possession for seven years. Five years: Actions upon verbal contracts; upon a liability created by statute; actions for trespass to real or personal property or for damages for withholding same; for the specific recovery of personal property; actions upon negotiable instruments; actions upon accounts between merchants, and actions for relief from fraud or mistake. Two years: Actions upon merchants' accounts for goods sold. Actions for injury to person or character, and for breach of promise of marriage.

Notes and Bills of Exchange. All bills of exchange are negotiable, but notes are only made so when "payable and negotiable at any bank incorporated under any law of this commonwealth or organized in this commonwealth under any law of the United States, which shall be indorsed to and discounted by the bank at which the same are payable, or by any other of the banks in the commonwealth as above specified." Non-negotiable instruments are assignable so as to vest a right of action in the assignee, but any defense good against the payee and arising before notice of the assignment is good against the assignee Indorsers of non-negotiable notes can only be held after suit and return of "no property" against the maker commenced and prosecuted with due diligence. What is "due diligence" has not been exactly determined, but a delay of ten days has been held to release the indorser from all liability.

Powers of Attorney. Powers of attorney to convey real or persona property may be acknowledged, proved, and recorded in the proper office in the manner prescribed for recording conveyances. If the conveyance made under a power, is required by law to be recorded or lodged for record to make the same valid against creditors and purchasers, then the power must be lodged or recorded in like manner. Resident married women may not convey real estate by attorney.

Protest. Protest should be made upon the last day of grace. It is essential to a recovery against indorsers on foreign bills, of negotiable notes placed in their rank, but an inland bill is not required by law to be protested (though notice of its non-payment should be given), nor is a certificate of a notary of such protest evidence of itself of dishonor.

Taxation. All real and personal property in this State, all personalty belonging to persons residing in this State, and all property of corporations organized under the laws of this State are subject to taxation. Personal property includes choses in action and all intangible property. Corporations, in addition to the tax upon their property, must also pay a tax upon their franchises, the value of which is fixed by a board consisting of the auditor, treasurer, and secretary of State. The following classes of property are exempt from taxation: Public property, places of worship, cemeteries, purely public charitable institutions, educational institutions not conducted for gain, public libraries and their endowments, parsonages, and household goods to the value of $250. Assessment is made as of September 15th, of each year. Taxes of banks and trust companies are due July 1st, those of other corporations thirty days after notice. For non-payment a fine of $50 is assessed, and interest runs at the rate of 10 per cent per annum. Taxes of individuals are due March 1st, after which time they may be collected by distress on goods and chattels. After July 1st, real estate may be sold, and after November 1st, a penalty of 6 per cent on the face of the bill is added. Property sold may be redeemed by paying interest at the rate of 30 per cent per annum and a penalty of 15 per cent on the tax.

Wills. Any person of sound mind and over twenty-one years of age may make a will. Wills must be in writing with the name of the testator subscribed thereto either by himself or by some other person in his presence and by his direction. If not wholly written by the testator the subscription must be made or the will acknowledged by the testator in the presence of two witnesses, who shall subscribe their names in the presence of the testator. The will of a person domiciled out of this State is valid as to personalty, if executed according to the law of the domicile; but to be valid as to lands, it must be executed as required by the the law of this State. The county court has exclusive original jurisdiction over the probate of wills.

SYNOPSIS OF THE LAWS OF LOUISIANA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. RICHARDSON & SOULÉ, Attorneys at Law, New Orleans. (*See Card in Attorneys' List.*)

Accounts. (*See Acknowledgments.*)

Acknowledgments of deeds executed within the State may be made before a notary public, parish recorder or his deputy, in the presence of two witnesses. These witnesses must be males over fourteen years of age. In other States, before a commissioner of Louisiana, or any officer authorized to take depositions in the State where he resides, but the official character of such officer must be properly verified. A Louisiana commissioner may certify to the official position of any public officer in the State for which he is appointed. An account or claim can be proved by the ex parte affidavit of creditor where there is no contest. No seal or scroll of private individuals is authorized or required by the laws of this State. When a married woman executes a deed with her husband, she must be examined by the officer separate and apart from her husband to ascertain if she acts under his coercion. A deed to be authentic and to be admissible in a court of justice without other proof of signature, must be acknowledged and signed before a notary or commissioner of deeds. In other States any oath or acknowledgment made before a notary public, duly appointed in such States, when certified under the hand and official seal of such notary, shall have the same force and effect without further proof of the signature, seal and official character of such notary, as if taken or made by or before a Louisiana commissioner residing in such State. Act 140 of 1896. In foreign countries every deed, conveyance, mortgage, sale, etc., made or taken before any ambassador, minister, charge d'affaires, secretary of legation, consul-general, consul, vice-consul, or commercial agent, and every acknowledgement, attestation, or authentication of any of said instruments, oaths, etc., made by any of said officers under their official seals and signatures shall have the full force and effect of an authentic act executed in this State. No witnesses necessary. Party appearing before any of said officers need not be a resident of the place where said officer is located. Notarial copies of original when deposited in this State in a notary's office have full force and effect of authentic copies of acts executed in this State. [Act 164 of 1898.]

Actions. (*See Suits and Courts.*)

Administration of Estates by executors, administrators, or tutors who are ex-officio administrators — also by dative executors — where there is no heir present or agent of heir, public administrator takes charge. A non-resident executor of a will must in all cases give bond; a resident does not unless required by creditors. Administrators and executors of other States must open succession of deceased in the courts of this State, and be recognized as such here before they can sue or be sued or transfer property in this State.

Affidavits. (*See Acknowledgments.*)

Aliens. After one year's residence in State may be naturalized. There is no distinction between aliens and residents, except that the former have the advantage of suing in the United States courts. There is no law excluding them from buying or holding lands. They are only excluded from voting, but this privilege is not availed of by at least one-third of those that are residents and citizens.

Appeals from judgments for amounts under $2,000 are taken to the court of appeals; for amounts over that sum to the supreme court of the State. Appeals to the State supreme court from each parish of State are returnable at New Orleans. [Act 12 of 1894.] Appeals are suspensive or devolutive; the former suspends execution, the latter does not. Suspensive appeals must be taken within ten days after judgment, devolutive appeals may be taken within one year.

Arbitration. Agreements to submit to arbitration recognized by law. Arbitrators must be sworn, otherwise decision is not binding. [State board of arbitration of labor troubles established [Act 139 of 1894.]

Arrest for debt may be made on affidavit that the debt is really due, and that petitioner verily believes that debtor is about to remove from the State permanently, without leaving in it sufficient property to satisfy his demand; and that he does not take this oath with intention of vexing debtor, but only in order to secure his demand. Debtor may be discharged by disproving facts; by giving bond, by making surrender, by delivering to sheriff property sufficient to satisfy demand. Arrest of the debtor only secures his presence to answer the suit; he cannot be held for the payment of the debt.

Assignments and Insolvency. State insolvent laws superseded by National Bankruptcy act.

Respite. A debtor alleging that he can not meet his obligations, but that he has assets sufficient to pay his debts in full if given time, may, on filing a schedule of his assets and liabilities, on his ex parte application, obtain a stay of proceedings against him, and call a meeting of his creditors before a notary. The vote of a majority in number and amount of these may give him an extension of time not to exceed three years. Creditors opposing may require security. If a respite is granted by a majority of the creditors in number and amount, the debtor is allowed to keep and dispose of his property as he pleases, and the only consequence of his failure to pay his installments upon his debts is that insolvency ensues and he surrenders what is left, if any, to a syndic. A creditor may protect himself by a writ of sequestration or attachment. In case of cession of property to creditors, holders of mortgages are not prevented from foreclosing as if no cession had taken place. [Act 15 of 1894.]

Attachment. Writs of attachment issue on application of creditor, under oath, when the debtor resides out of the State; when he conceals himself to avoid being cited; when he has mortgaged, assigned or disposed of, or is about to mortgage, assign, or dispose of his property, rights, or credits, or some part thereof, with intent to defraud his creditors or give an unfair preference to some of them; and when he has converted, or is about to convert, his property into money or evidences of debt with intent to place it beyond the reach of his creditors, or, if debt not due, is about to remove his property out of the State. Creditor must furnish bond equal to the amount claimed to be due, with at least one solvent surety, residing within the jurisdiction of the court, conditioned for payment to any party injured by issuance of writ of all damages sustained by him in case it is decided that the attachment was wrongfully obtained. (Act No. 7, 1888.) Garnishment may be had as an accessory either to a writ of attachment or fieri facias.

Banks. There is a State Examiner of State banks. [Article 191, Constitution 98 and Act 198 of 1898.] The State banks make quarterly reports of their condition to said State examiner of State banks. Since the adoption of the constitution of 1879, banking corporations must be organized under the general free banking laws adopted in 1855, amended in 1892 as hereafter stated. Savings, deposit, and trust companies provided for by Act 150 of year 1888. The number of persons organizing must exceed five. No special acts of incorporation can be passed. There are no laws requiring savings banks to invest in any particular class of bonds. There are eight banks in the city of New Orleans still doing business under State charters—the Citizen's Bank, the Canal Bank, the People's, Germania Savings, Metropolitan, Teutonia Savings Bank, Provident Savings & Safe Deposit Bank, and United States Trust & Savings Bank. The others are national banks. By Act 95 of 1892, the general banking act of 1855 was amended as follows: 1. Period of time must be fixed in act not to exceed ninety-nine years. 2. Banks can not hold real estate for longer time than five years, except such as necessary for the transaction of their business, or except that held as agent or trustee. 3. All managers and directors shall be citizens of Louisiana. 4. Safe deposits and trust banks without power to issue bank notes, may be organized under this law with a capital of $50,000 or more, of which capital at least $10,000 shall be paid up before commencing business. It may be made a receiver, trustee, assignee or syndic, and execute trusts of every description. The capital stock as paid in shall be taken as security. Money or other valuables deposited by married women or minors may be drawn out without the authority of their husbands or tutors.

Bills and Notes and Bills of Exchange. The laws of the State of Louisiana, in relation to commercial paper, as well as most other commercial matters, are taken from the English common law. Smith's Commercial Law, Biles, Edwards and Parsons are the standard authors upon the subject. Commercial paper may be defined to be the written evidence of a debt transferable by delivery. It may be a bill of exchange or promissory note. The promissory note is a written promise to pay a certain sum of money, at a future time, unconditionally. It is not necessary to state the place of payment, or that it be made payable at a bank, or at any fixed place of payment in the State. If no place is named, it will be presumed to be payable at the place where it is made. If none is stated, then at the domicil of the maker. Three days' grace are allowed upon bills of exchange and notes, or other obligations made negotiable by law, but no grace is allowed on sight bills or orders for money on demand. If the last day of grace be a Sunday or legal holiday, or should the day succeeding the last also be a holiday, then the bill or note will be payable on the next day not a holiday. "Service of citation shall not be waived, nor judgment confessed, by any document under private signature executed prior to the maturity of the obligation sued on." Article 91, Constitution 1898. Whenever a promissory note is indorsed for the benefit of the maker thereof, if caused by the maker to be discounted in any bank in operation within the State, or if the maker obtain any money in consideration of said note from any person, the indorser shall be bound to the holders of the note as if it had been discounted or negotiated for his own use or benefit. Bills and notes, or other obligations for the payment of money, to be evidence of a debt must express the whole sum in writing. The cents may be in figures. Days of public rest are January 1st, January 8th, February 22d, April 6th (Confederate Decoration Day), November 25th, "Labor Day" (in New Orleans), July 4th, December 25th, Sundays, Good Friday, Thanksgiving Day, and Shrove Tuesday (in New Orleans), and Saturday from 12 M., in cities of 100,000. An administrator appointed by another State court can not sue here upon a claim due the deceased. Bank deposits of deceased depositors may be transferred to heirs on production of judgment rendered in other States without requiring successions to be opened here. [Act 112 of 1894.] Checks redeemable only in goods forbidden. [Act 71 of 1894.]

Chattel Mortgages and deeds of trust not legal in this State. (*See Mortgages.*)

Collaterals must be delivered to be effectual.

Contracts. The law of contracts is not different from the laws of other States. They are made inviolate by the constitution of the United States and of the States. They are divided into three heads: Personal, hereditable, and mixed, and may be created by express agreement or implied.

Conveyances. (*See Acknowledgments.*)

Corporations. *Statutory Provisions.* Under the general laws of this State, any number of persons, exceeding six, may form themselves into corporations for literary, scientific, religious, and charitable purposes; for works of public improvement, and generally all works of public utility and advantage; and any number of persons, not less than three, may form themselves into a corporation for the purpose of carrying on mechanical, mining, or manufacturing business, except distilling or manufacturing intoxicating liquors, with a capital not less than $5,000 or more than $1,000,000; and any number of persons, not less than twenty-five, may form themselves into a corporation for athletic, military, gun practice, or social purposes. Any number of persons, not less than three, may form themselves into a corporation on complying with the general corporation laws, for the purpose of carrying on any

lawful business or enterprise not otherwise specially provided for, except stock-jobbing. The legislature can not pass a special act conferring corporate powers. (Constitution 1898, Art. XLVIII.) The general laws under which corporations are formed are subject to alteration, amendment, and repeal. All classes of foreign insurance corporations may transact business in this State. A deposit of $25,000 is first required. This deposit must be made with the secretary of State, but if a similar deposit has already been made in any other State of the Union, the deposit is not required. This deposit is required to be made in cash. (See Act 1886, p. 15.) But if securities are deposited in other States it will answer. They are deposited with the State treasurer. A certificate of authority to transact business is issued by the secretary of State. No license fee or tax need be paid before the certificate of authority will be issued. Full detailed annual statements are required to be made by foreign insurance corporations. These must show any losses on the 1st of January of each year. The certificate of authority to transact business will be revoked when the foregoing provisions are not complied with. All foreign insurance corporations may hold real estate wherever and to whatever extent they choose. Mutual or assessment corporations will be admitted to do business in this State when they comply with the laws applicable to other classes of insurance corporations. Corporation committing a trespass or damage may be sued at place where it occurred. [Act 23 of 1894.] All corporations hereafter organized must have their charters, etc., recorded in the office of the Secretary of State. [Act 59 of 1898.]

Courts. *Terms and Jurisdiction.* The courts of original jurisdiction are: In parishes other than Orleans: 1. Justices' courts—exclusive jurisdiction up to $50, and, concurrent with the district courts, between $50 and $100. 2. District courts—concurrent with justices' courts, between $50 and $100; exclusive for all civil matters over $100, and in all probate matters and appellate jurisdiction in all civil matters in justices' courts. *B.* In Orleans Parish: 1. City courts—exclusive jurisdiction up to $100. 2. Civil district courts—exclusive over $100. Justices and city courts open at all times. In parishes other than Orleans, district courts shall hold continuous sessions during ten months of the year. In parish of Orleans, civil district court sits from October 15th to end of June, but shall remain open on all legal days during the whole year for granting interlocutory orders, issuing writs, trials of rules to quash same, trying proceedings instituted, or on appeal therein by a landlord for the possession of leased property, partition proceedings, and for such special probate and insolvency business, as the court *en banco* may by rule determine. [Act 4 of 1896.] On all amounts up to $2,000, inclusive, an appeal may be taken to the court of appeals, from the city and district courts respectively, and on all amounts over $2,000, to the State supreme court. An appeal lies on both law and facts. Appeals from the city courts shall be tried *de novo*.

Days of Grace. (*See Bills and Notes.*)

Depositions. (*See Acknowledgments.*)

Descent and Distribution of Property. (*See Succession.*)

Divorce. (*See Married Women.*) Can not get absolute divorce except for adultery, or in cases where the husband or wife may have been sentenced to an infamous punishment. Divorce may be obtained after one year by party who obtains a judgment of separation from bed and board, and after two years by party against whom such judgment is rendered; provided there has been no reconciliation between the parties.

Dower. (*See Married Women.*)

Execution. Property taken under a writ of *fieri facias* must be advertised and appraised, and can not be sold for less than two-thirds of the appraised value, until it has been re-advertised. Advertisements of movables three times in ten days—of real estate once a week for thirty days. If two-thirds of appraised value is not bid, property must be re-advertised for fifteen days, and sold on a credit for twelve months for whatever it will bring. There is no redemption of property sold under execution or mortgage. No stay of execution is given except on appeal, and execution may issue at any time after the delay for appealing suspensively has expired. Embezzlement punished by imprisonment not exceeding seven years. [Act 1888.]

Exemptions. To head of family, real estate if owned and occupied as a residence, together with certain furniture, stock, implements, provisions, etc.: the property not to exceed $2,000, and provided the person claiming the benefit of the homestead execute a written declaration of homestead (Acts 1880, No. 114), and no exemption if wife has separate property worth over $2,000. No registry required in parishes other than Orleans. (Operative Jan. 1, 1899.) Widow surviving is entitled to $1,000 out of deceased husband's estate, if in necessitous circumstances, by preference over even a first-mortgage creditor. Sheriff or constable can not seize linen and clothes of debtor or his wife, nor his bed, nor those of his family, nor his arms and military accoutrements, nor tools and instruments and books, sewing machines necessary for the exercise of his or her calling, trade, or profession, by which he makes a living, the rights of personal servitude, of use and habitation, of usufruct to the estate of a minor child, the income of dotal property, money due for salary of an officer, wages or recompense for personal services (laborers' wages) cooking stove, plates, etc., family portraits, musical instruments played on by family. (Acts 1876, No. 70.)

Emancipation. 1. Minors of the full age of fifteen years may be emancipated by their father or mother by act before a notary public and two witnesses. This emancipation only confers the power of administration upon the minor. He can not bind himself legally for any sum exceeding one years' revenue. 2. Minors are emancipated of right by marriage. Have same rights as minors emancipated at fifteen years. 3. Minors over the age of eighteen years may be relieved from the time prescribed by law for attaining the age of majority. This done by petition to court having jurisdiction and judgment gives him full power to do and perform all acts as if he were twenty-one years.

Fraud vitiates all contracts. Action barred by one year limitation to annul sale on account of fraud.

Garnishment. (*See Attachment.*)

Holidays. (*See Days of Grace.*)

Husband and Wife. (*See Married Women.*)

Interest. Legal rate is 5 per cent, but 8 per cent may be agreed upon. If higher than 8 per cent is charged, such charge forfeits entire interest. If paid, it may be sued for and recovered within twelve months. But a higher rate may be recovered if included in the principal of the note.

Judgments recorded in the office of the parish recorder become mortgages from date of record upon all real estate of the debtor, and may be thus recorded in any parish where debtor owns real estate. They are valid for ten years, when they must be renewed.

Laws. The laws of this State are found in the Louisiana Civil Code, Code of Practice, and Revised Statutes of the State, adopted in 1870, and legislative acts, and the new constitution, adopted May 12, 1898, as interpreted by the decisions of the supreme court of the State, published in its Law Reports from the 1st Martin's Reports in 1811, to the 51st Annual Reports published in 1899, inclusive.

Limitations to Suits. Prescription—Accounts stated and acknowledged in writing are prescribed only by ten years. [Act of 1888.] Personal actions one year: Action for torts of all kinds; for injury to or non-delivery of merchandise shipped on vessels; for fees of justice, notary, or constable; for innkeepers' accounts; for accounts of retailers of liquors; for wages of laborers or sailors; for freight; and for tuition by month. Three years: Action for arrearages of rent charges, or hire of movables or immovables or money lent; for salaries of overseers, clerks, or tuition by quarter or year; for fees of physicians, apothecaries, attorneys, sheriffs, clerks, and recorders; on open accounts of merchants, whether wholesale or retail, and others. Four years: Actions by minors against their tutors, counting four years from majority. Five years: Action on bills of exchange or promissory notes, counting from maturity, and for nullity of contracts or wills; for recision of partitions; to set aside public and judicial sales for informalities. Ten years: All other actions; the right to a usufruct or servitude; all judgments, whether rendered within or without the State, but judgments may be revived before lapse of ten years, and are then good for ten years from date of revival. Real actions—Ten years: Where possessor holds in good faith, and under an apparently good title, translative of property, his title is perfect by ten years' possession. Thirty years: Possessor, whether in good or bad faith, even without title, acquires title by thirty years' possession. Renunciation of an acquired prescription can be proved only by writing, signed by debtor, or his agent; interruption, if debtor living, may be proved by parol, but if he be dead, must be proved by signed writing. A sale of real estate may be rescinded for non-payment of the price within ten years after the last payment becomes due. Prescription does not run against minors or persons under interdiction. Husband and wife can not prescribe against each other.

Married Women. Separate property of wife may be controlled by her; revenues of all separate property administered by the husband, and all property acquired by either husband or wife after marriage constitute part of community, unless bought with the separate means of either and as a separate acquisition. A married woman can not sue without the concurrence of her husband or the authorization of the court, and she can not bind herself or her property for his debts. Wife has no dower in her husband's real estate. The wife can have no claim upon the property of the husband to the prejudice of third parties, unless recorded. Where one of the spouses is agent for the other, he or she may be witness for the other in a matter connected with that transaction. After dissolution of marriage by death or divorce the survivor is entitled to one-half of all property remaining after payment of debts, acquired during marriage, and in case of death, the usufruct of the other half, unless this half is disposed of by will of deceased spouse.

Mortgages can be foreclosed at any time after maturity of the debt, by instituting a regular suit and obtaining judgment thereon, or, if the act imports a confession of judgment in favor of the holder, he can apply to the court for an order directing the sheriff to seize and sell the property. All mortgages must be recorded before they can have any effect as against third parties. Trust deeds are not legal, and chattel mortgages are unknown to the laws of Louisiana. There is no redemption of property sold under mortgage. All tacit mortgages have been abolished since 1870. In making sales or giving a mortgage upon his property, it is not necessary for the husband to obtain the signature of the wife. A mortgage resulting from recording a judgment can not have that effect until after adjournment of court. [Act 1888.] Lien for labor on logs granted by act of 1890. Privilege on crops to be recorded (Act of 1890). The vendor of an agricultural product of the United States has a five days' privilege for unpaid purchase price in preference to all others. All other privileges can be enforced against the article upon which it bears while in the hands of the person who created them, but can not be enforced against third holders of the property.

Notaries Public. Must give bond for $10,000, in New Orleans, and number limited to 150; bond to be renewed every five years. [Acts of 1896.]

Notes. (*See Bills of Exchange.*)

Powers of Attorney. (*See Acknowledgment.*)

Privileges. Privileges against movables, such as the vendor's lien for the unpaid purchase price, not required to be recorded except in such cases as the General Assembly may prescribe by law. (Article 187, Constitution of 1898.) A furnisher of water for crops has a lien thereon to secure payment therefor. [Act 26 of 1898.]

Protest. (*See Days of Grace and Notes.*)

Railroads not permitted to charge more than three cents per mile. [Act of 1890.] Railroads may mortgage its property and franchises. [Act 23 of 1898.] Street railroad companies may consolidate. [Act 100 of 1898.]

Separation from Bed and Board. May be claimed reciprocally for: 1. Adultery. 2. When spouse condemned to infamous punishment. 3. Habitual intemperance, excesses, cruel treatment, or outrages, when such renders living together insupportable. 4. Public defamation of one spouse by the other. 5. Abandonment. 6. Attempt of one spouse against life of other. 7. When one spouse charged with infamous offense actually flees from justice.

Suits. Actions are commenced by petition setting forth cause of action, etc., and signed by plaintiff or his attorney. Plaintiff must, in Orleans, if required, give resident security for costs of court; in other parishes, must make a deposit to cover costs. Full names and residences of parties should be supplied. All testimony must be taken contradictorily after notification to the opposite party, but may be taken out of court and reduced to writing by consent of all parties. Administrators, etc., may sell bonds and stocks at private sale upon order of court to that effect. In case of minors family meeting necessary. [Acts of 1890.]

Succession. Donations can not exceed two-thirds if the donor leaves at his death a legitimate child, one-half if he leaves two, and one-third if he leaves three or a greater number. The wife has no dower right, but is entitled to one-half of the community estate after payment of debts—that is, property acquired after and during marriage. If she is left penniless she may claim the marital fourth.

Taxes. The collector is required to give ten days' public notice of his readiness to receive taxes, and after ten days from the expiration of such notice, must give written notice to each resident delinquent; non-resident delinquents are notified by publication in parish paper. If taxes on movable property are not paid within three days more, collector may seize and sell property, after ten days' advertisement. Taxes on real estate can not be enforced until the expiration of the year for which they are levied and after legal notices to delinquents and advertisement. Lands sold for taxes are redeemable within one year, by the owner, his agent, or heirs, or any creditor, on payment of the purchase money, with 20 per cent interest and costs, and all subsequent taxes paid. Lands sold for taxes due prior to 1880 are not redeemable. State taxes are six

mills on the dollar, and parish taxes not exceeding ten mills; city of New Orleans tax 2.02 per cent. Notice must be given of sale for taxes, which shall not be by publication (constitutional provision). Tax of 20 per cent on estates of deceased non-residents for charity hospital. [Act 130 of 1894.]

Warehouses. A certificate from clerk of court necessary before transaction of business by public warehouseman. Transfer of warehouse receipts transfers property which it represents. [Act 1888.]

Wills. There are four different kinds of wills, viz.: The olographic, nuncupative by public act, nuncupative by private act, and mystic (or sealed) will.

SYNOPSIS OF THE LAWS OF MAINE

RELATING TO

BANKING AND COMMERCIAL USAGES.

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(*See Card in Attorneys' List.*)

Accounts. (*See Actions.*)

Acknowledgments. (*See Deeds.*)

Actions. At law begun by writ, under common law practice, but containing declaration. Returnable in any county where either party lives in this State; if no plaintiff lives in State, then in defendant's county; if neither party lives here, in any county where property is attached; but in trustee process (garnishment) in some county where one of the trustees resides. No affidavits required for commencement of suit. Full names and residence of all parties (including partners) should be furnished, or corporate name of incorporated company. To attach real estate, all original notes, contracts, etc., or copies, and itemized statements of accounts and claims, or balance stated and agreed upon, are required. Suits in equity are begun by bill of complaint, filed with clerk of court and subpœna issued by him, or may be inserted in writ of attachment and served by copy of bill and writ.

Affidavits. Affidavits may be made before a notary public or justice of the peace. Affidavits required to pleas and motions in abatement, also from creditor in proving claim in insolvency court, and may be used in interlocutory and ex parte hearings.

Aliens. Aliens may hold and convey real estate and personal property. Wills of aliens may be proved and allowed in this State. Widow of a citizen of United States who was an alien when she married him has dower in his estate (but see *Married Women.*)

Appeals. (*See Courts.*)

Arbitration. Judge of probate court may authorize executors or administrators to adjust by arbitration claims for or against the estates represented by them. All controversies which may be the subject of personal action may be submitted, by the parties, to referees for arbitration. Majority of referees may make report to Supreme or Superior Courts.

Arrest. (*See Executions.*) In actions *ex delicto*, on mesne process and execution, as of course without affidavit or order; in actions *ex contractu*, on mesne process upon affidavit of the creditor, his agent, or attorney, that he has reason to believe and does believe that the debtor is about to depart and reside beyond the limits of the State and carry with him means of his own more than are necessary for his immediate support, and that at least $10 is due on the claim; on execution, only after supplementary proceedings and fraud proven, but if contract judgment or action existing March 17, 1887, arrest on execution. Debtors arrested on mesne process or execution may disclose, give up property not exempt from attachment and be discharged from arrest, or may give bond and disclose according to its terms. (*See Insolvent Law.*) No arrest in actions *ex contractu* for less than $10, and none of married women in civil actions.

Assignments. Common law assignments for the benefit of creditors may be made, and after four months will be good against bankruptcy proceedings. At any time prior to expiration of four months they are subject to dissolution by such proceedings.

Attachment. All property not exempt attachable on mesne process as of course without affidavit; security for costs by indorser of writ only if creditor is non-resident; lien by attachments in the order in which they are made continuous for thirty days after judgment (extended where execution is delayed, appeal from taxation of costs is taken, or decision of law court certified down in vacation), within which time levy may be made. Personal property may be appraised and sold on mesne process to avoid expense, depreciation or loss, on request of either party and proceeds held by officer in lieu of the property; foreign attachment (garnishment), known as trustee process, attaches property held by or debt due from trustee unless: 1. Due on negotiable paper. 2. Money collected on process by officer. 3. In hands of public officer. 4. Due on contingency. 5. Trustee liable to execution on same. 6. Twenty dollars, for personal labor of the debtor, wife or minor child within one month in action not for necessaries. Equitable trustee process where property can not be reached by process at law, and not exempt from attachment; where property is conveyed in fraud of creditors; and where property is secreted so that it is not repleviable.

Banks. Savings bank business and discount banking permitted only under general statutes or special charter, and under State supervision. Discount banks must pay in one-half of capital before commencing business, and the whole within one year of date of charter. Stockholders are liable for additional sum equal to amount of stock. Circulation limited to 50 per cent of capital and $3 in excess for every $1 held in specie. Must not owe, besides non-interest bearing deposits over double amount of paid-in capital. Subject at all times to examination by bank examiner. Tax is one-half of one per cent on paid-in capital. Foreign banking associations having a branch here pay a tax of one-fourth of one per cent per annum on the amount of business done in this State. (Laws 1899.) Savings banks have no capital, and do business only for the benefit of depositors, under statute regulations restricting investments, requiring reports under oath and examinations by bank examiner. Must not pay over 2½ per cent dividend semi-annually. Franchise tax amounts to five-eighths to seven-eighths per cent, regulated to favor home investments.

Contracts. No action shall be maintained upon any contract to charge an executor or administrator upon any special promise to answer damages out of his own estate; nor to charge any person upon any special promise to answer for the debt, default, or misdoings of another; nor to charge any person upon an agreement made in consideration of marriage; nor to charge any person upon any contract for the sale of lands, tenements, or hereditaments, or of any interest therein; nor to charge any person upon any agreement that is not to be performed within one year from the making thereof; nor to charge any person upon any contract to pay a debt after discharge therefrom under assignment or insolvent laws of this State; unless the promise, contract, or agreement or some memorandum thereof is in writing and signed by the party to be charged, or his agent. No action shall be maintained on a minor's contract unless ratified by him in writing after becoming twenty-one years of age, except the contract be for necessaries or real estate where he has received title and obtained benefit. No contract for sale of goods, etc., of $30 or more in value is valid unless purchaser accepts or receives a portion of the goods or gives something to bind the bargain, or in part payment thereof, or some memorandum is made and signed by party charged or his agent.

Corporations. Three or more persons may form a corporation to carry on any lawful business excepting banking, insurance, constructing and operating railroads, savings banks, trust companies, or corporations intended to derive profits from the loan or use of money, and safe deposit companies. Corporations for other purposes, excepting for municipal purposes and where the objects of the corporation can not be attained without special acts, are also formed under general laws. No portion of capital is required to be paid in, but directors must be stockholders or members of another corporation which is a stockholder; must pay to the State, upon organization, a fee as follows: Where the capital stock is $10,000 or under $10,000, $10; exceeding $10,000 and up to $500,000, $50; above $500,000, $10 for every $100,000 of capital. Other fees for organization are: Attorney general's fee, $5; register of deeds, $4; secretary of State, $5. Meetings of stockholders must be held within the State. Clerk must be resident and keep stockholders' records in the State. Delivery of certificate of stock to bona fide purchaser, or pledges for value together with written transfer of same or written power of attorney to sell, assign, and transfer same, signed by owner of certificate, transfers titles against all parties. (Laws of 1897, C. 293.) Only original subscribers and takers of stock are liable on same to extent of unpaid par value, and then only for debts contracted during their ownership of stock, and action to enforce such liability must be commenced within two years, and can be maintained only by a judgment creditor of the corporation. Foreign corporations have practically same rights as domestic. Corporations may dispose of their franchises on majority vote of the stockholders; may sue and be sued, and have generally the powers of individuals.

Courts. *Terms and Civil Jurisdiction.* Supreme judicial court: Two or three terms a year in each county; unlimited jurisdiction except as specified below; full jurisdiction in equity; appellate jurisdiction *in banc* on questions of law, from trial terms and superior courts. Superior courts: In Cumberland county except equity, divorce, real actions, extraordinary legal remedies and some others; exclusive jurisdiction above $50 to $500, concurrent jurisdiction above $500; sits first Tuesday of every month except June, July, and August. Kennebec county; exclusive jurisdiction, with exceptions to $500; concurrent in habeas corpus and divorce; sits first Tuesday of April, September, and December at Augusta; second Tuesday of June and November at Waterville. Courts of probate: Usual jurisdiction of probate matters; full jurisdiction in insolvency (*q. v.*). Municipal courts and trial justices: Exclusive jurisdiction of forcible entry and detainer and in other cases up to limited amount; appeals to superior court where established, and elsewhere to supreme judicial court.

Deeds. Any owner of real estate having right of entry may convey it by deed. No estate greater than tenancy-at-will can be created except in writing. Deeds must be acknowledged by a grantor or one of them or by attorney in fact, executing the same, before a justice of the peace, notary public, or woman qualified to take acknowledgments; outside the State, and in the United States, before a justice of the peace, notary public, or commissioner of deeds for this State, and in a foreign country before a notary public, or a consul or minister of the United States. Unacknowledged deeds cannot be recorded. No special form of acknowledgment required. Deeds must be recorded to be valid against parties without notice of the conveyance. Deeds must be under seal, but witness is not required for validity although usual to have one. Wife may convey her own real estate, but not that conveyed her by her husband, directly or indirectly, without his joining in the deed, unless same was conveyed to her in payment of a debt. Leases for more than seven years must be recorded. Trusts concerning real estate can be created only in writing, excepting those arising by implication of law.

Depositions. Depositions may be taken by disinterested justice of the peace or notary public; may be taken when deponent is unable through age, infirmity, or sickness to attend at place of trial; when deponent resides out of, or is absent from the State; when deponent resides in town other than that in which trial is to be held, etc. Depositions so taken may be used in all civil suits or causes, petitions for partition of land, libels for divorce, prosecutions for the maintenance of children, petitions for opinions in trial before courts of arbitrators, referees and county commissioners, and in cases of contested senatorial or representative elections. Depositions or affidavits may also be taken in applications for pensions, bounty, or arrears of pay under any law of the United States. Courts may issue commissions to take depositions out of the State, or they may be taken out of State by a justice, notary, or other person empowered, but in the latter case it is within the discretion of the courts to admit or reject them.

Descent and Distribution of Property. (*See Estates of Deceased Persons.*)

Divorce. Divorce may be decreed by supreme judicial court for following causes: Adultery, impotence, extreme cruelty, desertion continued for three consecutive years, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium, or other drugs (laws 1899), cruel and abusive treatment, or on the libel of the wife where the husband grossly or wantonly and cruelly refuses or neglects to provide her suitable maintenance; provided, however, that the parties were married in the State, or resided here after marriage, or that libelant resided in State when cause of divorce had accrued, or had resided in State in good faith for one year prior to commencement of proceedings, or if the libelee is a resident of State. (Laws of 1897, C. 207.) Either party may be a witness.

Dower. Abolished by laws of 1895, chap. 157, taking effect as to persons not then married, May 1, 1895; as to others, Jan. 1, 1897. Wife or husband may bar the right by inheritance to one-third or one-half, as the case may be, of realty by joining in the other's deed, or by sole deed, or by ante-nuptial settlement, or by jointure. Either refusing to join in other's conveyance may be barred of inheritance upon application to supreme judicial court and decree after hearing. (*See Estates of Deceased Persons.*)

Estates of Deceased Partners. Survivor to exhibit partnership property to executor or administrator of deceased who shall include it in inventory, have appraisal made, but carry out only the interest of deceased. Survivor may give bond; administer partnership estate, pay debts and expenses and pay over the share of deceased partner to his legal representative. If he does not, then the administrator must give such bond

and administer, and may use survivor's name to collect the debts. Assets, real and personal, of the partnership may be sold, commissioners on exorbitant claims appointed as in estates of individuals; and if partnership estate insufficient to pay debts it may be represented insolvent and administered as other insolvent estates, but this shall bar the recovery of any balance from survivor or estate of a deceased partner. Upon death of person so giving bond before completing administration, an administrator of the partnership may be appointed to complete it.

Estates of Deceased Persons. Administered in probate court of each county with appeals to the supreme judicial court as supreme court of probate. Administrator or executor to give bond unless executor excused in will; have inventory and appraisal; pay debts and charges and distribute balance of personal property according to law or will of the testator; sales of personal property made upon license; sales of real estate when necessary to pay debts and charges and in some other cases, upon license and bond. Eighteen months after notice of appointment allowed creditors to present claims. Allowance to widow and minor children, made by court from estate. Non-resident executor or administrator must appoint attorney. Time of demand or notice extended for absent creditor if further assets, but prior payments not disturbed thereby. Examination of any one suspected of embezzlement. No administration granted after twenty years; commissioners may be appointed to determine claims deemed exorbitant in like manner as in insolvent estates. The real and personal estate of a person deceased intestate being subject to the payment of debts descends according to the following rules: 1. If he leaves a widow and issue, one-third to the widow. If no issue, one-half to the widow. And if no kindred, the whole to the widow. And to the widower shall descend the same shares in his wife's real and personal estate. There shall likewise descend to the widow, or widower, the same share in all such real estate of which the deceased was seized during coverture, and which has not been barred, or released, as herein provided. In any event, one-third shall descend to the widow or widower free from the payment of debts. (1897, C. 196.) 2. The remainder of which he dies seized, and if no widower, or widow, the whole, together with all wild lands, shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child is living at the time of his death, to all his lineal descendants; equally, if all are the same degree of kindred; if not, according to the right of representation. 3. If no such issue, it descends to his father and mother in equal shares. 4. If no such issue, or father, it descends one-half to his mother. If no such issue or mother, it descends one-half to his father. In either case, the remainder, or if no such issue, father or mother, the whole (laws of 1897, C. 193) descends in equal shares to his brothers and sisters, and when a brother or sister has died, to his or her children or grandchildren by right of representation. 5. If no such issue, father, brother or sister, it descends to his mother. If no such issue, mother brother or sister, it descends to his father. In either case, to the exclusion of the issue of deceased brothers and sisters. 6. If no such issue, father, mother, brother or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer ancestor, in preference to those claiming through an ancestor more remote. 7. When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent, and the issue of those deceased; in equal shares if al are of the same degree of kindred; otherwise, according to the right of representation. 8. If the intestate leaves no widower, widow or kindred it escheats to the State.

Executions issue after twenty-four hours from rendition of judgment, returnable in three months, renewable within ten years after. No stay except by order of court for cause and one year against absent defendants unless bond filed; levied on real estate by appraisal and extent, also on real estate and interests in the same and franchises and personal property by sale; money and, by consent, circulating notes applied directly.

Exemptions from Attachment and Execution. Homesteads, not exceeding in value $500, when duly registered; debtor's apparel, necessary furniture for family, not exceeding in value $100; bed and bedding for each two persons; family portraits, bibles, school books in use; State statutes; library, $150; regular pew; cook stove and iron warming stoves; charcoal, twelve cords of wood, five tons anthracite coal, fifty bushels bituminous coal, $10 worth of lumber, wood, or bark; produce of farms till harvested; barrel of flour, thirty bushels of corn and grain, potatoes for family, one-half acre of flax and manufactures therefrom for family; tools of trade, and materials and stock, $50; sewing machine, $100; pair working cattle, or pair mules, or one or two horses, $300; hay to keep them; harness for each horse and mules $20; horse sled or ox sled, $20; domestic fowl, $50; two swine, one cow and one heifer, if no oxen, horse or mule, two cows; ten sheep, their wool, their lambs until one year old; hay to keep them and cattle; plow, cart, truck or express wagon, harrow, yoke with bows, ring and staple, two chains, mowing machine; fishing boat of two tons; debtor may elect if he has more than is exempt.

Grace. Days of grace abolished by Chapter 259, Laws of 1897, excepting as to drafts or bills of exchange payable at sight.

Holidays. (*See Notes and Bills.*)

Interest. Six per cent or any other rate agreed upon in writing; judgments, same rate; accounts and debts not on time bear interest from demand. Special rate in time notes does not continue after maturity, unless so provided; nor after judgment in any case; no usury laws. On loans for less than $200, secured by mortgage or pledge of personal property, the rate shall not exceed 3 per cent per month for first three months, and 15 per cent per annum thereafter. (Laws 1899.)

Judgments. At law; by general order at end of term on all cases where verdict or default, unless stayed by proceedings for new trial, or continued for judgment by plaintiff; in equity, only by decree signed by justice. No lien except by virtue of attachment on mesne process (*q. v.*) and where specially provided by law.

Liens. (*Voluminous Statute Provisions, for Mechanics, Material Men, etc.*)

Limitation of Actions. Six years: debt on unsealed contract or liability (except judgments); actions upon judgments out of State of court not of record; for arrears of rent; of account, assumpsit, or case on contract or liability express or implied; waste; trespass qu. cl. and d. b. a; case, except slander and libel. Four years: against sheriff. Two years: assault and battery, false imprisonment, slander, libel and penalty. One year: escape, scire facias and on recognizance. Eighteen months: stolen bonds and coupons, except by owner. Twenty years: witnessed notes, bank bills, specialities, real action, other judgments and all other personal actions. Suit begun when writ is made. Incapacity of plaintiff, death of either party within thirty days before or after expiration of time, fraudulent concealment of action, absence from State when cause accrues or residence out of the State and absence afterwards, extends time. Actions barred where both parties lived are barred here. New promise must be in writing or part payment must be made, to extend time. Against executors and administrators, eighteen months (laws 1899), unless further assets or claim not matured. Against heirs or devisees, one year after claim accrued; remedy in equity, if not prosecuted within time limited and if without culpable neglect.

Married Women have same rights and liabilities as to property contracts and all suits as men. Wife's property not liable for her husband's debts, nor his liable for her prior debts nor for others made on her credit. She may sue and be sued as if sole. (*See Arrest, also Dower, also Estates of Deceased Persons.*)

Mortgages. Of real estate: executed and acknowledged as deeds and must be recorded as to third parties; convey fee with condition of defeasance; usually secure payment of notes. Foreclosed without possession by serving or advertising notice, or by possession obtained peaceably, or by consent, or by suit. Redemption in three years from notice or possession; may be limited in mortgage to not less than one year; power of sale mortgages not authorized by statute and not much used. Chattel mortgages to be good against third parties must be recorded in town clerk's office where mortgagor resides when mortgage is given; or, if all parties non-resident, where property is situated; or possession taken and retained. Notes for over $30 for chattels sold and title and possession retained must contain agreement therefor, and be recorded as chattel mortgages; such mortgages and notes foreclosed by 60 days' notice to mortgagor or assignee of record, or, if out of State, by publication; redemption in sixty days. Collaterals pledged on notes, etc., or for the performance of anything, after failure to pay or perform by the pledgor, may be sold by the pledgee, he first giving written notice to the pledgor of the proposed sale, or if his residence is unknown, by publication of notice once a week for three successive weeks in a newspaper in the city or town where the pledgee resides, recording said notice and affidavit of service of same in the clerk's office of the city or town where the pledgee resides, and after the expiration of sixty days from the time of said recording.

Notes and Bills. Grace on bills, notes, drafts, and orders on time abolished by Laws of 1897, C. 259, taking effect July 1, 1897. Falling due on Sunday or bank holiday payable and presentable for payment on secular or business day next succeeding. If holiday falls on Sunday then following Monday is deemed bank holiday. (1897, C. 259.) On notes payable at fixed place on demand at or after a time certain, no recovery unless demand proved there before suit; usual demand and notice to charge indorser; notarial protest proves it; but one indorsing note at inception before payee does is a maker. Waiver of demand and notice, acceptance of bill, draft, or order must be in writing and signed. Recovery from indorser without suing maker. Rate of damages on protested bills of $100 or more payable in this country, 1 to 9 per cent according to place. Negotiable paper presumed to be taken in payment of debt or liability for which it is given.

Powers of Attorney. Usual common law rules.

Probate Law. (*See Estates of Deceased Persons.*)

Protest. (*See Notes and Bills.*)

Replevin. (*See Actions.*)

Seals. Corporate, and court, magistrates', and official seals may be made on paper by impression with or without wafer or wax. Others made with some adhesive substance.

Suits. (*See Actions.*)

Taxes. State taxes assessed by board of State assessors to towns on State valuation which is revised annually; county taxes are granted by the legislature on the estimate of county commissioners and by them apportioned to towns. State, county, and municipal taxes are assessed together on polls and real property situated in town, and personal property owned by inhabitants, not exempt upon valuation by the assessors who commit them to collector by warrant, may be collected by arrest, distress, or suit. On real estate they are a lien; proceedings to enforce by sale begin upon non-payment for nine months; non-resident owners have eighteen months from sale to redeem by paying tax, costs, and 25 per cent interest from twelve months after commitment; residents, two years after collector's return with 20 per cent interest after return. Land of non-residents must be sold after eighteen and not more than twenty months from commitment; sale is of smallest fractional part of interest to one who will pay taxes, interest, and costs therefor. State tax assessed by board of State assessors on gross receipts of railroads and express companies, and on value of telegraph and telephone lines, collected by suit. No tax to corporations on capital stock, except banks (*q. v.*) State taxes at 2½ per cent collateral inheritances above $500. Special exceptions and exemptions from assessment, and special provisions for taxing personal property situated here but owned out of the State.

Transfer of Corporation Stocks. (*See Corporations.*)

Wills. Wills must be in writing signed by the testator, or at his request by some person in his presence, and subscribed in his presence by three witnesses in presence of each other, may be made by any person of age and of sound mind, and may dispose of all property. Wills executed in another State or country according to laws thereof, may be proved and allowed in this State in the county where the testator had his residence at time of decease; if proved without this State (at his domicile), may be allowed in any county here where he has property.

SYNOPSIS OF THE LAWS OF MARYLAND

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by FIELDER C. SLINGLUFF, Attorney at Law, Baltimore. (*See Card in Attorneys' List.*)

Accounts. Affidavit made by the party bringing suit to the correctness of accounts, amount then due, and no payment, satisfaction, or securities taken for the same, other than credited or itemized account by plaintiff, is all that is necessary, although if facts are known to shipping clerk or bookkeeper, it is well to have them to make affidavit also.

Acknowledgments of conveyances of any interest in real or leasehold property for above seven years, may be made within the State, and in the county or city in which the land, or any part of it, lies, before a notary public, justice of the peace, a judge of the orphans' court, a judge of the circuit court of any county, or a judge of the supreme bench of Baltimore city. If within the State, but out of the county in which the estate conveyed lies, they may be made before a judge of any circuit court for the circuit where the grantor may be, or before any judge of the orphans' court for the city or county in which the grantor may be, notary public, or a justice of the peace; the official character of the justice must be certified by the clerk of the circuit, county, or superior court (Baltimore city), under his official seal, or any judge of the supreme bench of Baltimore city, if grantor be in Baltimore city. If without the State, they may be made before a notary public, a judge of any court of the United States, or of any State or Territory court having a seal, or a commissioner of deeds for this State. The seal of the officer or court to be affixed to the certificate of acknowledgment in all cases. If acknowledged without the United States, the acknowledgment may be made before any minister, consul general, vice or consular agent or deputy, or a notary public, or a commissioner to take acknowledgments for State of Maryland. Every deed conveying any interest in real estate, must be signed and sealed by the grantor and attested by at least one witness. A scroll seal is sufficient. No words of inheritance are necessary to create an estate in fee simple, and no separate examination of a married woman is required.

Actions. The forms of actions, which still savor of the common law, are now very simple, any plain statement of facts constituting a good cause of action being sufficient. Amendment is allowed at any time before verdict. Equitable defenses are now allowed to be made in a court of law, although there are still law courts and equity courts having different and distinct jurisdiction. (*See Suits.*)

Administration of Estates. The orphans' court of the counties and the orphans' court of Baltimore city are the courts of probate. In cases where decedent left a will, letters are granted to executor and executrix named in the will. In granting letters of administration, where decedent died without leaving will, letters are granted: 1. To widow or child or children; 2. Grandchild; 3. Father; 4. Brothers and sisters; 5. Mother; 6. Next of kin; 7. Largest creditor applying for letters. Bond is required with two sureties, or certain local surety companies where authorized by their charter to act as sole surety, and where testator requests in will that executor be excused from giving bond, court only requires nominal bond for amount sufficient to pay estimated debts.

Affidavits. (*See Acknowledgments.*) No particular form necessary but whoever can take an acknowledgment can take an affidavit. Affidavits always required in a mortgage as to the bona fides of mortgage, consideration, and the payment of tax on annual interest.

Aliens. Aliens, not enemies, may take and hold lands, tenements, and hereditaments acquired by purchase, or to which they would, if citizens, be entitled by descent, and may sell, devise, or dispose of the same or transmit the same to their heirs as fully and effectually and in the same manner as if by birth they were citizens of this State.

Appeals. Appeals are regulated by statute. The rules of the different courts regulate the rules as to procedure. These rules are at full set forth in the rules of court of appeals and Code 1888, Act 5, and in the rules of court of the supreme bench of Baltimore city.

Arbitration. Disputes between parties may be conducted by any judge or justice of the peace mutually agreed upon. Special agreements for arbitration of such disputes to be valid. Parties may be represented by an attorney, and award of arbitrator or arbitrators to be a judgment, and court may give judgment and issue execution on the award.

Arrest. No arrest for debts in this State. In criminal cases a sentence may be passed, imposing a sum of money as a fine, and then in lieu of payment by party of fine imposed upon, he is liable to imprisonment.

Assignments. (*See Insolvent Law and Deeds of Trust.*)

Attachments for debt [See Act 1890, Chap. 549], or for unliquidated damages, sounding either in contracts or torts, can be obtained in all cases when the defendant is a non-resident or has absconded, affidavit being first made by the plaintiff to the correctness of his claim and the fact that the defendant is a non-resident or has absconded. They may be also obtained in connection with an original process when the creditor or some one in his behalf shall give bond in double the amount of the debt, with sureties to be approved by the clerk, and make affidavit before the clerk of the court where the suit is brought that the defendant is bona fide indebted to the plaintiff in the sum claimed, and that the plaintiff knows or has good reason to believe that the debtor has absconded or is about to abscond from the State, or that the defendant has assigned, disposed of, or concealed, or is about to assign, dispose of, or conceal, his property, or some portion thereof, with intent to defraud his creditors, or that the defendant fraudulently contracted the debt or incurred the obligation; or that the defendant has removed or is about to remove his property, or some portion thereof, out of this State, with intent to defraud creditors; and the attachment may be maintained, although the debt or obligation upon which the action is brought may not have matured, but the date of the maturity of the debt or obligation must be set forth in the affidavit [Act 1894, Ch. 648]. A claimant may have the attached property released by filing a bond in double the amount of the appraisement. Any kind of property or credits belonging to the defendant, in the plaintiff's own hands or in the hands of any one else, and shares of stock in a corporation, may be attached. Credits not due may be attached, but wages, hire, or salary not due can not be attached, and the sum of one hundred dollars of such wages, hire, or salary shall always be exempt from attachment, imrisonment for debt is abolished. Defendant may be sued wherever he does business. In addition to attachments against non-residents or absconding debtors for debt (*i. e.*, a liquidated sum), as heretofore, attactments may now be issued against such debtors in cases arising from contracts when the damages are unliquidated, and in actions for wrongs independent of contract, but in such cases no attachments can be issued until a declaration is filed setting out specially and in detail the breach of the contract complained of or the tort actually committed, verified by the affidavit of the plaintiff or some one in his behalf, and until a bond shall be filed similar to the bond required in attachments for fraud. [Code 1888, Art. 9.] All papers in attachment proceedings can now be amended, as in any other actions at law. [Act 1898, Ch. 44.]

Banks. The act of 1898, Chap. 277, made important changes in the banking laws of this State. The law now provides that all banks incorporated under the laws of Maryland, if located in Baltimore city, shall have a capital stock of not less than $300,000, and, if anywhere else in the State, of not less than $50,000. It further provides: 1. Stockholders must own stock four months before they can vote it for any purpose; 2. Directors must be stockholders and citizens of the State; 3. No one can be director in two banks at the same time; 4. Statements must be made annually by the directors to the stockholders; 5. Every banking association, authorized by its charter to do a banking business in this State, shall make to the treasurer of the State of Maryland no less than five reports during each year, to be verified by the oath or affirmation of the president, cashier, or treasurer of such association or trust company, and attested with the signatures of at least three of the directors thereof, showing in detail, and under appropriate heads, the resources and liabilities of such association at the close of business on any past day specified by the treasurer of the State; and a summary of such report shall be published in a newspaper published in the city or county where such association in this State may be ocated. The treasurer shall also have the power to call for special reports whenever he deems the same necessary; 6. The issue of notes is not to exceed the capital stock paid in, and no note of less than $5 to be issued, nor of any amount intermediate between $5 and $10; 7. The debts are at no time to exceed the capital stock, and the directors are liable for such excess; 8. If dividends are declared which impair the capital stock, the directors are liable; 9. No director can be paid for his services; 10. A bank can hold land for its immediate accommodation in its business, and such as may come in payment of debts due, but must get rid of such land as it acquires for debts in three years; 11. No loans must be made to the State or the United States to exceed $50,000; 12. Banks must not pay out any funds or money other than the legal currency of the United States, notes issued by the authority of their charter, and notes issued by other banking incorporations received at their par value by the banks so paying them out; 13. All State banks, whether incorporated under the provisions of this act or not, must pay annually to the State twenty cents on every $100 of the issue of notes then in actual circulation, which such bank may have lawfully issued, to be applied to the augmentation of the free school fund of the State. 1886, Chap. 501, continues this act in force till January 1, 1905. There are no laws restricting savings banks as to the class of bonds they may invest in.

In addition to the statements to be made to the State treasurer, an examiner, appointed by the treasurer of the State, shall visit each and every association doing a banking business in the State (excepting State banks which may be members of the Baltimore Clearing Association, and as such required regularly to submit to an examination by a national bank examiner) at least once in each year or oftener, if in his judgment it may be necessary. The treasurer of the State, or such examiner, for the purpose of investigation, is authorized to administer oaths, and examine under oath or affirmation the owners and directors, and all officers and employes and agents of such bank, and the examiner making such examination shall reduce the result thereof to writing; no person shall be appointed examiner to investigate the condition of any bank who shall be an officer, agent, or employe thereof. Whenever the treasurer of this State shall become satisfied that any of the banking associations named have failed to comply with the provisions of the law, he shall have the right by his certificate, with the approval of the Governor, to declare the charter of such association, company, or corporation forfeited, and said certificate shall be conclusive evidence of such forfeiture, and thereafter he shall appoint, with the assent of the Governor, a receiver of all the assets of such association. The provisions of the law as to visits by the State bank examiner do not apply to savings banks having no capital stock, building or homestead associations, or National banks, or to corporations authorized by their charters to transact a trust, fidelity, surety, or deposit business in this State; trust, fidelity, surety, or deposit companies being required by the act of 1896, Chap. 160, to make certain deposits in bonds with the State treasurer before they can conduct business in this State.

Bills of Lading, warehouse, elevator, and storage receipts, and any vouchers acknowledging the possession of goods as in storage are made negotiable, unless otherwise provided, in the same sense as bills of exchange and promissory notes, and are made conclusive evidence in favor of bona fide holder for value, that goods therein described were actually received. The bills should not be issued until goods actually in possession [Code 1888, Art. 14]. Penalties are provided for acts and frauds which impair the value of these securities [Code 1890, Ch. 399.]

Chattel Mortgages. Chattel mortgages are of like nature as bills of sale, and enable the borrower to retain possession of property which he has mortgaged, if duly acknowledged and recorded. Any one who removes, secretes, hypothecates, destroys, or sells mortgaged personal property, with intent to defraud, is guilty of misdemeanor. [1894, Ch. 315.] Law requires affidavit to chattel mortgages and bills of sale as to bona fides of consideration, and that mortgage or bill of sale be recorded within twenty days after execution in city or county where land lies, to be valid against third parties. Affidavit as to mortgage tax is required in chattel mortgages. [Act 1896, Ch. 120.] (*See Mortgages.*)

Collaterals. The conversion by any banker, broker, merchant, attorney, or agent of collaterals is made a misdemeanor. [See Code, Art. 27, Sec. 93.]

Contracts. The normal condition of all persons is one in which they are capable of making any contract. The fourth and seventeenth sections of the Statute of Frauds are in force in Maryland. A citizen can not make a contract with an alien enemy during the continuance of hostilities; but aliens, not enemies, may contract and hold real property as fully as citizens. The later cases decide contracts of infants to be voidable and not void; and they are capable of ratification by infants on arrival at age of twenty-one. The contracts of infants for necessaries are binding upon them. The contract of a lunatic is voidable and not void. The statute provides that a married woman may engage in business, contract, sue, and be sued upon contracts and torts, as if unmarried. [Code 1898, Ch. 457.] All gambling contracts and contracts made on Sunday are void.

Conveyances. No estate or title to any property lying within this State, for any period above seven years, shall pass or take effect unless the deed conveying the same shall be executed, acknowledged, and recorded. [See Code 1888, Art. 21, Sec. 1.] Every deed of real estate shall be signed and sealed by the grantor and bargainor, and attested by at least one witness. No words of inheritance necessary, but every deed shall be construed to pass fee simple title unless the contrary appear. A scroll with the word "seal" therein by way of a

seal, is sufficient. A deed must be recorded within six months from date, in county or Baltimore City, where land lies, but if recorded after this, deed, while valid between parties, is invalid as to deeds to bona fide purchasers without notice recorded prior thereto. A body corporate must embody in the deed itself the appointment of an attorney to acknowledge the deed as and for the corporate act of said corporation.

Corporations are organized under the authority of the General Incorporation Law. See Code, Art. 23; 1890, Ch. 134, and 184, Ch. 599, as to classes of corporations that may be formed under general law, and provisions concerning formation of same. Corporations shall not be created by special act, except for municipal purposes, and except where there is no provision in the general law providing for creation of corporation proposed to be formed. In such cases application must be made to the legislature. Every corporation created after March 24, 1894, except cemetery companies, companies created for purely benevolent and charitable purposes, railroad companies, and building or homestead associations, shall pay to the State at time of incorporation a bonus of one-eighth of one per cent upon the amount of its authorized capital stock, and a like bonus upon the amount of any authorized increase of its capital stock, to be paid at the date of such increase. [Acts 1894, Ch. 114.] Act 1898, Ch. 270, requires foreign corporations to deposit a fee of $25 with the Secretary of State before opening or continuing any office for the transaction of business in this State, together with certified copy of charter and other prerequisites.

Courts. *Terms and Jurisdiction.* The circuit courts in the counties have jurisdiction at common law in cases involving more than $50, and equity in all cases involving more than $20. They hold from two to four regular terms in each county at which they have a jury; there are, however, intermediate terms fixed by the rules, to which process may be made returnable. The circuit court and circuit court No. 2 of Baltimore City have exclusive equity jurisdiction in the city. The superior court, the court of common pleas, and Baltimore city court have concurrent common law jurisdiction in cases involving more than $100. The court of common pleas has exclusive jurisdiction in insolvency, and the criminal court in criminal cases. The orphans' courts in Baltimore City, and in the counties have probate jurisdiction. Justice's jurisdiction, $200. The common law courts have three terms in the year, and rule days every month in the year to which process may be returnable. The equity courts have six terms in the year, beginning the first Mondays of January, March, May, July, September, and November.

Days of Grace. No grace allowed on bills and notes, but the same are due and payable as expressed in the bill or note, without grace. (Acts 1896, ch. 106.)

Deeds of Trust made for the benefit of all creditors, and bona fide, convey to trustee under deed of trust, a title which can not be interfered with by proceedings in insolvency against the grantor. Acts of 1894. (*See Assignments and Insolvent Law.*)

Depositions. When the courts are satisfied, by affidavit or otherwise, that there are material and competent witnesses residing without the State, they will direct that a commission be issued to take the testimony of such witnesses. The commissioners are selected by the court, and must qualify before some person authorized to administer an oath in the State where they reside. The depositions, duly certified by the commissioners, shall be admitted as evidence at the trial of the cause, subject to the same objections and exceptions as the same testimony would be if the witness had been personally present in court and there examined. Parties have the right to be present when the testimony is taken under the commission, and must receive reasonable notice of the time and place. Examination is restricted to the parties and interrogatories and cross-interrogatories annexed to the commission.

Descent and Distribution of Property. As to descent, see Code, Art. 46, and as to distribution, Code, Art. 93.

Divorce. Divorce comes within the jurisdiction of court of equity. Divorces are dissolved *a vinculo matrimonii* for the canonical causes on impediment existing previous to marriage. Divorces *a mensa et thoro* are decreed for vicious conduct, cruelty of treatment, abandonment, and desertion. The court has power to decree the custody of children, and in some cases decrees as to how property shall be divided; and has power to allow alimony.

Dower. The common-law right of dower exists in Maryland, and extends to equitable estates. A devise or bequest of real or personal property to the wife shall be construed to be in lieu of dower in lands or share of personal estate, respectively, unless otherwise expressed in the will. If the widow renounces formally in writing, however, such provision made for her by will within six months after the grant of administration on the estate of her deceased husband, her dower right and the share of his personal property remain undisturbed. (*See Married Women.*)

Executions may issue and judgments may be renewed or revived by *scire facias* at any time within twelve years from date of judgment or from the expiration of any stay, and may be therein levied on any property of the defendant. In the circuit courts for the counties there is a stay until the first Thursday of the term succeeding the rendition of the judgment, provided the judgment is obtained at the second term after the defendant is summoned. There is no stay upon judgments rendered in the courts of Baltimore city or by justices of the peace in the city or counties, but execution may issue forthwith. The defendant may stay the execution by superseding with sureties for six months. Copy of docket entries of judgment when recorded in another county makes the judgment a lien there. [Act 1890, Ch. 314.]

Exemptions. No homestead law. Wearing apparel, books and tools (not kept for sale) and $100 of property in addition, are exempt from execution, except on judgments for breach of promise to marry and seduction, not applicable to any but actual bona fide residents of this State. Equitable interests in personal property can not be sold under execution, but may be levied upon, and the lien thus acquired may be enforced in equity. Choses in action may be attached.

Fraud. Any false representation made by one to another with the intent to defraud, and the defrauded party, thinking the alleged fraud to be true, acts upon it, any contract thus made can not be enforced. But if the injured party knows such representations to be false, it can not be said to have influenced his conduct. For general doctrine in this State see McAleer vs. Horsey, 35 Md. 439.

Garnishments. (*See Attachments.*)

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. (*See Dower, Divorce, and Married Women.*) In this State the husband is not liable for wife's antenuptial debts or contracts. Husband is liable for necessaries of wife. Acts 1898, Ch. 457, gives husband same interest in wife's estate as wife has in husband's estate.

Insolvent Law. Now superseded by National Bankrupt Law, passed July 1, 1898.

Interest. The legal rate of interest is 6 per cent per annum. Judgments bear interest from their date. A person proved guilty of usury forfeits the excess over the real sum or value of the goods and chattels lent, and legal interest thereon. Since 1876, where the whole debt, including the usury, is paid, the usurious interest can not be recovered back.

Judgments are liens for twelve years from date of rendition on any interest of the defendant in real or leasehold property within the county where rendered. They can be transferred from one county to another by sending a copy of the docket entries to the clerk for record. The lien commences from the date of the entry of the docket entries by the clerk. Judgments are not liens on personal property until execution has issued and the writ is in the hands of the sheriff. [See Act 1890, Chap. 558, as to examination of judgment debtors.] (*See Suits.*)

Limitations of Suits. Accounts and notes are barred after three years, sealed instruments and judgments after twelve years. A verbal promise or acknowledgment will revive a debt barred by the statute.

Married Women. Act of 1898, Chap. 457, repeals and reenacts the entire law in this State. Married women may hold and dispose of their property lawfully as if unmarried; the husband must unite in the conveyances of married women under 18 years, and they may engage in business, contract, sue, and be sued upon contracts and for torts, as if unmarried. Married woman is alone liable for antenuptial debts and contracts. Husband is still liable for necessaries. Widow is entitled to dower in real estate, and one-third of the personal estate if there are children, and if no children one-half of the personal estate; husband has same rights in wife's property as wife has in husband's property. Where the wife is adjudged a lunatic upon requisition, and the finding remains in force, husband may convey after required property by separate deed, as if unmarried.

Mortgages are executed, acknowledged, and recorded same as deeds, and are not valid against creditors unless recorded within six months. There must be an affidavit made by the mortgagee or his agent at any time before recording, that the consideration is true and bona fide, and that the mortgagee will not require the mortgagor, or any other person for him, to pay the tax levied upon the mortgage interest, and upon the assignment of any mortgage except for the purpose of foreclosure, a like affidavit must be made by the assignee. If made by agent, he must, in addition, make oath that he is the agent of the mortgagee. A like affidavit is required to chattel mortgages, and absolute bills of sale, both of which must be recorded within twenty days. The lien of a mortgage may, by ceasing to pay interest or any installment of the principal for twenty years, be barred. They may be foreclosed at any time after the debt becomes due and before the lien is barred.

Notes and Bills of Exchange. Negotiable instruments are defined by Ch. 119 of the Laws of 1898, which repeals all laws inconsistent with the provisions of this act. Section 20 provides as follows: "An instrument to be negotiable must conform to the following requirements: 1. It must be in writing and signed by the maker or drawer. 2. It must contain an unconditional promise or order to pay a sum certain in money. 3. Must be payable on demand, or at a fixed or determinable future time. 4. Must be payable to order or to bearer; and 5, where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty." Its negotiability is not affected by a seal, or by a provision which authorizes the sale of collateral securities in case the instrument be not paid at maturity, or authorizes a confession of judgment if the instrument be not paid at maturity; or waives the benefit of any law intended for the advantage or the protection of the obligor; or gives the holder an election to require something to be done in lieu of payment of money. It is not necessary that paper should be made payable at a bank or any fixed place. To charge indorser, notice of non-payment must at once be given to him. The time of maturity is regulated by statute as follows: "SECTION 145. *Time of Maturity.* Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 o'clock noon, on Saturday, when that entire day is not a holiday." Legal holidays are: Christmas, New Year's Day, February 22, Good Friday, July 4, Decoration Day, May 30, first Monday in September, all days of general and congressional elections throughout the State and any day of public thanksgiving or humiliation and prayer proclaimed by the governor or legislature, and all Saturdays after 12 o'clock noon are a legal half holiday. By Act 1896, Ch. 198, it shall be lawful for banks and bankers in the city of Baltimore to close their doors for business at 12 o'clock noon, on each and every Saturday in the year, and every Saturday in the year, after 12 o'clock noon, shall be a legal half-holiday, so far as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor, of bills of exchange and other negotiable paper, and for these purposes shall be considered as the first day of the week, or Sunday, and all negotiable paper shall be deemed to be presentable on the secular day next succeeding. Days of grace have been abolished in this State.

Power of Attorney. Every power of attorney authorizing an agent or attorney to sell and convey any real estate, shall be attested and acknowledged in the same manner as a deed, and recorded with the deed executed in pursuance of such power of attorney. A corporation shall have power to appoint an attorney for the same purpose, by its corporate seal. Such power of attorney shall be deemed to be revoked when the instrument containing the revocation is recorded in the office in which the deed should properly be recorded.

Probate Law. (*See Administration of Estates and Wills.*)

Protest is usually made by notary public. Notary must keep register of protests. A protest of notary public is *prima facie* evidence of non-acceptance or non-payment, and of the presentment of said note for payment, or of said bill for acceptance or payment, at the time and in the manner stated in the protest, and the protest shall also be *prima facie* evidence that such notice has been sent or delivered in the manner therein stated. (*See Notes and Bills of Exchange.*)

Replevin is a remedy to recover specific goods and chattels to whose possession the plaintiff is entitled. Also the proper remedy to recover possession of goods distrained unlawfully.

Suits. Actions are at common law. Pleadings have been simplified, but forms of actions remain as at common law. Service of writs must be made by the return day, which, in the counties, is the first day of each term, and in Baltimore city of each rule day. The plaintiff in any action at law (except ejectment and replevin) may claim a mandamus directing the defendant to do any act that he may be bound to do, or forbidding him to do any act it may be his duty to refrain from doing, either by contract or otherwise. The defendant in any action at law in which, if judgment was obtained, he would be entitled to relief in equity against

such judgment, may plead the facts which entitle him to such equitable relief by way of defense in such action at law. The plaintiff in his replication may, in reply to such plea, allege such facts as avoid the plea on equitable grounds, and so on. A court shall not refuse to issue a mandamus or injunction on the mere ground that the plaintiff has a remedy at law, unless the party against whom the writ is asked shall show to the court's satisfaction that he has the property from which the damages can be made or shall give a bond to pay such damages. In any suit for over one hundred dollars, where the cause of action is a contract, whether in writing or not, if no defense be made, the plaintiff, where the suit is under affidavit, shall be entitled to judgment fifteen days after the rule day to which suit is brought. [1894, Ch. 173.] In all cases where issues of fact are submitted to the court or jury, the court or jury, in addition to the general verdict, upon request, may return a special finding of fact upon any particular question pertinent to the issue. [Act. 1894, Ch. 185.]

Taxes. The county commissioners of the several counties of the State, and the mayor and city council of Baltimore city are directed to levy a tax annually upon real and personal property situated within the State, and no person who is not assessed to the sum of $100 shall be required to pay any tax. In addition to the above tax the State legislature, with the concurrence of the governor, regulates the State tax for the next two years following the meeting of legislature, which convenes every two years. The property of religious, charitable, benevolent, and educational institutions, and cemetery companies is exempt from taxation. In Baltimore city the mayor and city council have authority to exempt the plant of manufacturing industries from taxation, for the purpose of encouragement of industrial enterprises. Collectors may sell property to compel payment of overdue taxes, upon giving due notice of sale, and complying with other requisites of statute, and any person interested in property may redeem within one year and a day from date, by tendering to collector the whole amount received by collector from sale, with interest to date of tender, and in default of redemption, title to property rests in purchaser. Taxes are considered in arrears on first day of January next succeeding the date of their levy, and bear interest from that date. Act 1896, Ch. 120, re-eals and re-enacts the sections of the code relating to "Revenue and Taxes."

Transfer of Corporation Stocks. The stock of any corporation created under the general incorporation law shall be transferable as provided by the by-laws of the corporation, and no shares shall be transferable until all previous calls thereon shall have been paid in, or shall have been declared forfeited for the non-payment of the calls thereon. [Code, Art. 23, Sec. 63.] No foreign executor or administrator shall be authorized to transfer any corporate stock in this State until after he shall have given at least one month's notice by advertisement published twice a week for four weeks in two daily newspapers of the City of Baltimore, stating therein the death of his testator or intestate, and the amount and description of stock intended to be transferred. [Code, Art. 93, Sec. 79.]

Wills of land or personal property, and any codicil thereto, must be in writing, signed by the testator, or some one else for him, in his presence, at his request, and witnessed by two or more credible witnesses, as and for last will and testament of the testator in the presence of all the witnesses thereto. Nuncupative wills invalid except in case of disposition of personal property by soldiers and marines in actual service. [Code, Art. 93.] Every will or other testamentary instrument made out of the State shall be held to be valid in Maryland if the same be made according to the forms required by the law of the place where the same was made, or by the law of the place where the testator was domiciled when the same was made, or according to the forms required by the law of this State; and if the testator was originally domiciled in Maryland, although at the time of making the "will," or at the time of his death, he may be domiciled elsewhere, the said will or testamentary instrument then so executed shall be admitted to probate in any Orphans' Court of this State; and when so admitted shall be governed by and construed and interpreted according to the law of Maryland, without regard to the *ex domicilii*, unless the testator shall expressly declare a contrary intention in said will or testamentary instrument. [Acts 1894, Ch. 151.] No will, testament, codicil, or other testamentary paper shall be subject to caveat or other objection to its validity after the expiration of three years from its probate. [Acts 1894, Ch. 405.] When a person is unheard of for above seven years, and supposed to be dead, the Orphans' Court, under the provisions of Act of 1896, Ch. 246, may grant letters testementary or of administration as the case may be.

SYNOPSIS OF THE LAWS OF MASSACHUSETTS

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. WM. E. L. DILLAWAY and H. M. BURTON, Attorneys at Law, Boston. (*See Card in Attorneys' List.*)

Acknowledgments and Deeds. Acknowledgments may be made before any justice of the peace or notary public in the State; when the acknowledgment is made by any person without this State and within any other State, territory or district of the United States, it may be made before any officer of such State, Territory or district authorized by the laws thereof to take the proof and acknowledgment of deeds, and when so taken there shall be attached to the certificate of acknowledgment a certificate of the Secretary of the State or Territory in which such officer resides, under the seal of the State or Territory, or a certificate of the clerk of a court of record of such State, Territory or district, in the county in which such officer resides, under seal of said court, certifying as to the authority of such officer to take acknowledgments and as to the genuineness of his signature. In deeds where there is more than one grantor, the acknowledgment of one of them is sufficient.

Certificate of Acknowledgment:

COMMONWEALTH OF MASSACHUSETTS, } ss. (Date.)
County of ..... }

Then personally appeared the above named (name of person acknowledging) and acknowledged the foregoing instrument to be his free act and deed before me.

.....
(Name and title of officer.)

No separate examination or acknowledgment of wife joining in a release of dower necessary. Conveyances of land are made by deed under seal executed by the grantor or attorney having authority therefor. A conveyance in fee, for life or for a term exceeding seven years, shall not be valid except as against the grantor and persons having actual notice of it, unless recorded in the county in which the real estate is situated. Deeds must be under seal, a scroll being insufficient. No subscribing witness is necessary. Release of dower must be explicitly stated in deed, wife's joining in deed merely, being insufficient.

Actions. There are three classes of actions: contract, tort, and replevin. Actions at law are begun by writs issued in blank form by the clerks of the several courts. No declaration need be inserted in the writ, except in cases of arrest on mesne process or of an attachment of a vessel. Suits in equity are begun by filing a bill upon which a subpœna is issued by the clerk of the court. Actions begun by trustee process must be brought in the county in which the trustee or one of them resides or has his usual place of business. Actions concerning land must be brought in the county in which the land lies.

Administration of Estates. The judge of probate for the county where deceased last resided may appoint any person of sufficient capacity as executor or administrator. Executors or administrators are required to give a bond of about double the value of the personal estate. An executor will be exempt from giving sureties if testator so directs. An administrator will be exempt if all persons interested except creditors consent and all creditors are notified by publication. In case a non-resident is appointed executor or administrator, he must appoint a resident agent. There are public administrators in each county to whom administration is granted upon estates of persons who die intestate leaving property, and not having any husband, widow, or heir in this State. Ancillary administration may be granted upon the estate of a non-resident who dies leaving property in this State. Every administrator and executor shall file an inventory and publish notice of his appointment. Notice of a debt and demand for its payment should be given to an executor or administrator within one year *after* his appointment, and the debt should be paid after one year and within two years of the appointment. No suit can be brought by a creditor against an executor or administrator within one year after his giving bond, except on a claim not affected by the insolvency of the estate. No suit can be brought against an executor or administrator who has published notice of his appointment, after two years from time of his giving bond, unless he has received new assets after the expiration of the two years. A creditor whose claim does not accrue within the two years may cause assets to be reserved to answer to his claim. When the estate is insufficient to pay all claims, the executor or administrator shall represent the estate insolvent, and commissioners will be appointed to receive proof of claims. Claims for personal expenses, last sickness, and charges of administration, are not affected by the insolvency of the estate. Executors and administrators shall render an account at least once a year.

Aliens. Resident or non-resident aliens may sue and be sued and may hold and convey real estate.

Appeals. An appeal may be taken from the judgment of a municipal, police, or district court to the superior court. The appeal must be claimed and bond in sum of $100 filed within twenty-four hours after judgment.

Arrest. In an action of contract, the defendant unless she is a woman, may be arrested on mesne process, if the plaintiff or some one in his behalf makes affidavit that he expects to recover a sum amounting to $20; that he believes that defendant has property which he does not intend to apply to payment of plaintiff's debt; that he believes that defendant intends to leave the State. Actions of tort, against women as well as men, except for slander or libel, may be be begun by arrest of the defendant, on the plaintiff or some one in his behalf making certain affidavits. A defendant arrested on mesne process may give bail or he may apply to take an oath that he does not intend to leave the State, or the oath for relief of poor debtors; on taking such oath he is released from arrest. No arrest can be made if the property of defendant is attached upon the same writ. On an execution, except for costs, or where debtor is about to leave the State, he can not be arrested until he has first been cited before a magistrate for examination, and it appearing that he has property and refuses to assign it, the magistrate may order his arrest. When arrested under execution the debtor may apply to take the oath for relief of poor debtors.

Assignments *for benefit of creditors.* A voluntary assignment to trustees for benefit of creditors can not be avoided if assented to by creditors whose claims exceed the amount of property assigned, except by proceedings in insolvency begun within six months, or by proof of fraud. If there is property in excess of the claims of creditors who have assented, the excess in hands of the trustee can be reached by trustee process. Acts done in good faith by the trustee under an assignment are valid, though the assignment be afterward set aside, if the assignment is assented to in writing by a majority in number and value of the creditors not secured. The trustee shall on acceptance of the trust give notice in writing to all known credits of the assignment and acceptance thereof and shall deposit with the clerk of the city or town wherein the debtor has his principal place of business a copy of the assignment. The above would probably not apply under the provisions of the National Bankruptcy Act.

Insolvency. There is an insolvent law, but it is superseded by the National Bankruptcy Act of 1898.

Attachment. All real estate, goods, and chattels not exempt, may be taken in attachment on the original writ and held as security for judgment, except that lands and tenements can not be attached in suits involving less than $20. Attachments may be made in suits by or against non-residents as well as in suits by or against residents. No bond is required to make an attachment. Shares of stock in corporations organized under laws of this State, or of United States, may be attached by service on certain officers of the corporation. Debtor may dissolve attachment by furnishing bond with sureties to pay judgment obtained or value of property attached determined by appraisement. Upon affidavit by the creditor or some one in his behalf, that he has reason to believe that the debtor intends to leave the State and has property not exempt from attachment which he does not intend to apply to the payment of plaintiff's claim, the debtor may be arrested and held to bail. Debtor against whom judgment is rendered for over $20 may be subjected to sworn examination touching his property, and if he refuses to deliver up such property (not being exempt from attachment), an order for arrest will issue and he can then apply and be examined to take the poor debtor's oath. Proceedings in insolvency dissolve attachments made within four months of first publication. An attachment is dissolved by death of the defendant if administration is granted upon his estate upon application made within one year after his death.

Banks. In this State, safe deposit, loan, and trust companies are incorporated under special act of the legislature, and are governed by the provisions contained in the Acts of 1888, Chap. 413, and amendments thereto. Under the general law ten or more persons and their successors may form a corporation for the purpose of carrying on the business of banking. The general court may, by special act, annul or dissolve any such corporation; but its dissolution shall not impair any remedy against the same for liability previously incurred. The capital stock of each bank shall not be

less than $100,000 nor more than $1,000,000. The stock shall be paid in gold or silver money, one-half before the bank goes into operation, and the remainder within one year thereafter. Before commencing business the president and directors shall make a certificate specifying the corporate name, which shall be different from any previously organized in the Commonwealth; the location of said bank; the amount and number of shares of its capital stock; name and residence and number of shares of each stockholder, and the time when it is to go into operation; a copy of which certificate shall be filed with the secretary of the Commonwealth. No part of the capital stock can be sold or transferred until the whole amount thereof is paid up. No person can hold more than half the capital stock, exclusive of that held as security. In addition to the capital stock to which a bank is entitled, the Commonwealth may subscribe thereto an amount not exceeding 50 per cent of its authorized capital, when provision is made therefor by law. Said Commonwealth shall be entitled to its proportionate share of profits and dividends. Upon the vote of three-fourths of its stockholders, a bank may increase its capital stock to an amount not exceeding $1,000,000. No bank shall have less than seven nor more than twelve directors. The cashier is required to give bond in not less than $20,000, with two or more sureties, before entering upon his duties. The debts of a bank shall at no time exceed twice the amount of capital stock paid in exclusive of deposits not bearing interest, nor shall there be due the bank more than double the amount of capital stock paid in. Every bank is required to keep a reserve in lawful money of the United States, equal to 15 per cent of its liability for circulation and deposits. The circulating notes held by the bank shall at all times be secured in full by public stocks, which shall never be less in amount than $50,000. The property and effects of every bank shall be first applied to the redemption of its notes in circulation. Stockholders of a bank are liable in their individual capacity for the payment of all the circulating notes remaining unpaid in proportion to the stock they respectively hold when it stops payment.

Every bank doing business in Boston, except in the suburban districts which form a part of Boston, shall on every Monday morning transmit to the secretary of the Commonwealth a statement, under oath of the president or cashier, of the amount of capital stock, assets, and liabilities of the bank, including amount in the Boston clearing house, which statement shall be based upon the condition of the bank on the day of the week next preceding said Monday. Monthly reports are required from every bank in the State, not included in those above mentioned, to be made to the secretary of the Commonwealth. These reports are published in one or more of the daily papers in Boston on the Wednesday after same have been received. Every bank is required to make an annual report to the secretary of the Commonwealth of the condition of its affairs at 7 o'clock on any Saturday afternoon which the governor may direct, within fifteen days from the time designated, certified by the cashier and a majority of the directors. Any committee appointed by the general court may examine into the affairs of any bank, and shall have free access to its books and vaults. Commissioners of savings banks shall visit once in every year, and as much oftener as they may deem expedient, all such banks, and examine all their affairs, and make such inquiries as may be necessary to ascertain their condition, and make a report of such investigation to the general court.

Savings Banks in Massachusetts may receive deposits from any person until they amount to $1,000; and may allow interest upon such deposits, and upon the interest accumulated thereon, until the principal, with the accrued interest, amounts to $1,600; and thereafter upon no greater sum than $1,600; but the limitations contained in this section shall not apply to deposits by religious or charitable corporations, or to deposits made in the name of a judge of probate court or by order of any court. Deposits and income derived therefrom shall be invested only as follows: 1. On first mortgages of real estate, situated in this commonwealth, to an amount not to exceed 60 per cent of the valuation of such real estate; but not exceeding 70 per cent of the whole amount of deposits shall be so invested. 2. *a.* In the public funds of the United States, or of any of the New England States, or of the State of New York. *b.* In the bonds or notes of any county, city or town of this commonwealth. *c.* In the bonds or notes of any incorporated district in this commonwealth whose net indebtedness does not exceed 5 per cent of the last preceding valuation of the property therein for the assessment of taxes. *d.* In the bonds or notes of any city of the States of Maine, New Hampshire, Vermont, Rhode Island, or Connecticut, whose net indebtedness does not exceed 5 per cent of the last preceding valuation of the property therein for the assessment of taxes; or of any county or town of said States whose net indebtedness does not exceed 3 per cent of such valuation. *e.* In the notes of any citizen of this commonwealth, with a pledge of any of the aforesaid securities at no more than the par value thereof. *f.* In the legally authorized bonds of the States of Pennsylvania, Ohio, Michigan, Indiana, Illinois, Wisconsin, Iowa, Missouri and Minnesota and of the District of Columbia, and in the legally authorized bonds for municipal purposes and refunding bonds issued to take up at maturity bonds which have been issued for other than municipal purposes, but on which the interest has been fully paid, of any city of the aforesaid States and of the State of New York, which has at the date of such investment more than 30,000 inhabitants, as established by the last national or State census, or city census, and whose net indebtedness does not exceed 5 per cent of the valuation of the taxable property therein; and in the note or notes of any citizen of this commonwealth, with a pledge as collateral of any of the aforesaid securities, the amount invested in such note or notes not to exceed in any case 80 per cent of the market value of the securities pledged. 3. *a.* In the first mortgage bonds of any railroad company incorporated under the authority of any of the New England States, and whose road is located wholly or in part in the same, and which is in possession of and operating its own road, and has earned and paid regular dividends of not less than three per cent per annum on all its issues of capital stock for the two years next preceding such investment. *b.* In the first mortgage bonds of any railroad company incorporated under the authority of any of the New England States and whose road is located wholly or in part in the same, guaranteed by a railroad company such as is described in paragraph *a*, of this clause. *c.* In the bonds or notes of any railroad company incorporated under the laws of this commonwealth, and whose road is located wholly or in part therein, and is unencumbered by mortgage, and which has paid a dividend of not less than 5 per cent per annum for two years next preceding such investment. *d.* In the first mortgage bonds of any railroad company incorporated under the authority of any of the New England States, and whose road is located wholly or in part in the same, and has earned and paid regular dividends of not less than three per cent per annum for the two years next preceding such investment on all its issues of capital stock, notwithstanding the road of such company may be leased to some other railroad company. *e.* In the bonds and notes of the Fitchburg Railroad Company, issued according to law. *f.* In the bonds and notes of the Old Colony Railroad Company, issued according to law. *g.* In the bonds and notes of the Boston & Lowell Railroad Corporation, issued according to law. *h.* In the bonds and notes of the Boston & Maine Railroad, issued according to law. *i.* In the first mortgage bonds of the Concord & Montreal Railroad; provided, however, that said bonds shall be issued in whole or in part to renew and refund the existing mortgage indebtedness, and that an amount of such bonds equal at the par value to the amount of such existing mortgage indebtedness shall, by the terms of the mortgage securing the same, be made applicable exclusively to the payment of such existing mortgage indebtedness. *j.* In the bonds of the Maine Central Railroad Company, known as the consolidated mortgage bonds; provided, however, that said bonds be issued in whole or in part to renew and refund the existing first mortgage indebtedness, and that an amount of such bonds equal at the par value to the amount of such existing mortgage indebtedness shall, by the terms of the mortgage securing the same, be made applicable exclusively to the payment of such existing mortgage indebtedness. *k.* In the note or notes of any citizen of this commonwealth, with a pledge as collateral of any of the aforesaid securities at no more than the par value thereof. *l.* In the note or notes of any citizen of this commonwealth, with a pledge as collateral of shares of the capital stock of any railroad company incorporated under the authority of any of the New England States, and whose road is located wholly or in part therein, and which is in possession of and operating its own road, and has earned and paid regular dividends of not less than 5 per cent per annum on all its issues of capital stock for five years next preceding the date of such note or notes, or any renewal thereof, and at no more than 75 per cent of the market value thereof, such note or notes to be made payable on demand, and to be paid or renewed within one year of the date thereof. *m.* Street railway companies shall not be considered railroad companies within the meaning of this section. 4. In the bonds of the New York & New England Railroad Company, issued according to law, and for the payment of the principal and interest of which first mortgages, made as provided in chapter 301 of the acts of the year 1888, are held as collateral security under an indenture of trust duly made and entered into for that purpose; provided, that the amount of the bonds so issued shall not exceed the amount of the mortgages so held in trust, and that no one of said mortgages shall exceed in amount 60 per cent of the value of the real estate thereby mortgaged. 5. In the stock of any bank incorporated under the laws of this commonwealth, or in the stock of any banking association located in the New England States, and incorporated under the authority of the United States, or in the stock of any trust company incorporated under the laws of and doing business within this commonwealth, as provided for in chapter 413 of the acts of the year 1888, or of those trust companies incorporated as such by special charters granted under the laws of and doing business within this commonwealth, whose special charters require them to provide the same security as prescribed in sections 13 and 14 of said chapter 413, or in the notes of any citizen of this commonwealth, with a pledge as collateral of any of the aforesaid securities at no more than 80 per cent of the market value, and not exceeding the par value thereof: provided, that no such corporation shall hold, both by way of investment and as security for loans, more than 35 per cent of its deposits in the stock of such banks, associations, or companies, and shall not so hold more than 3 per cent of its deposits in, nor more than $100,000, nor more than one-quarter part of the capital stock of any one such bank, association, or company; any such corporation may deposit not more than 5 per cent of its deposits in any one such bank, association, or company, but such deposit shall not exceed in amount 25 per cent of the capital stock and surplus of such depositary. 6. In loans upon the personal notes of the depositors of the corporation, but not exceeding one-half of the amount of his deposit to a depositor; and in each such case the deposit and the book of the depositor shall be held by the corporation as collateral security for the payment of such loan. 7. If such deposits and income can not be conveniently invested in the modes hereinbefore prescribed, not exceeding one-third part thereof may be invested in bonds or other personal securities, payable and to be paid at a time not exceeding one year, with at least two sureties, if the principal and sureties are all citizens of this commonwealth and resident therein; provided that the total liabilities to any such corporation, of any person, or of any partnership, company, or corporation for money borrowed upon personal security, including in the liabilities of a partnership or company not incorporated the liabilities of the several members thereof, shall at no time exceed 5 per cent of such deposits and income. 8. Five per cent of the deposits of any such corporation, but not exceeding $200,000, may be invested in the purchase of a suitable site and the erection or preparation of a suitable building for the convenient transaction of its business. 9. Any such corporation may hold real estate acquired by the foreclosure of any mortgage owned by it, or by purchase at sales made under the provisions of any such mortgage, or upon judgments for debts due it, or in settlements effected to secure such debts; but all such real estate shall be sold by it within five years after the title thereof is vested in the corporation; provided, however, that the board of commissioners of savings banks may, upon the petition of the board of investment of any such corporation, and for good cause shown, grant an additional time for the sale of the same. They may also invest in bonds and notes of New York, New Haven & Hartford R. R., and in notes of any citizen of Massachusetts, with pledge as collateral, shares of stock in Boston & Lowell R. R., Boston & Providence R. R., Connecticut River R. R. and the Old Colony R. R., such notes not to exceed 75 per cent of market value of the securities pledged. They may also invest in the bonds of the Boston, Revere Beach & Lynn R. R. Co., and in the notes of citizens of Massachusetts with a pledge as collateral the first mortgage bonds of the Boston Terminal Co. at a valuation not exceeding par. In addition savings banks may invest their deposits and the income derived therefrom: 1. In the legally authorized bonds of the New York Central & Hudson River R. R. Co., of the Michigan Central R. R. Co., of the Lake Shore & Michigan Southern Ry. Co., of the Illinois Central R. R. Co., of the Pennsylvania R. R. Co., of the Delaware, Lackawanna & Western R. R. Co., of the Chicago, Burlington & Quincy R. R. Co., of the Chicago & Northwestern Ry. Co., and of the Delaware & Hudson Canal Co.; provided, that all such bonds shall be secured by a first mortgage of the whole or a part of the railroad and railroad property actually in the possession of and operated by such company; and provided, further, that each railroad whose bonds are hereby authorized for investment shall have earned and paid regular dividends on all its issues of capital stock of not less than 4 per cent each fiscal year for the ten years next preceding such investment, and that such capital stock shall equal or exceed in amount one-third of the par value of all its bonded indebtedness. 2. In the legally authorized bonds of any railroad company incorporated under the authority of the States of New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, or Iowa, whose road is located wholly or in part within the limits of said States, and has earned and paid regular dividends of not less than 4 per cent per annum on all its issues of capital stock for the ten years preceding such investment; provided, that said bonds be secured by a first mortgage of the whole or a part of the railroad and railroad property of such company, and be guaranteed, both principal and interest, by one or more of the companies named in the first clause of this act. 3. In the note or notes of any citizen of this commonwealth, with a pledge as collateral of any of the aforesaid securities at no more than the par value thereof.

Chattel Mortgages. Chattel mortgages must be recorded in the records of the city or town where the mortgagor resides when the mortgage is made, and in the city in which he then transacts business; every

mortgage must be recorded within fifteen days of the date; until recorded the mortgage is not valid except between the parties. On loans less than $1,000 secured by mortgage, the rate of interest can not exceed 18 per cent. It is a criminal offense to remove, sell, or conceal mortgaged property.

Corporations. There is a general law under which corporations may be organized to carry on any lawful business, except for transactions in real estate, banking, and insurance. The business of such corporations is conducted by a president, not less than three directors, clerk, and treasurer. Before commencing business the entire capital must be paid in, in cash or in property taken at a fair valuation satisfactory to commissioner of corporations. A certificate must be filed each year with the secretary of State showing the condition of the company. Salaried officers shall not vote as proxy or attorney at any corporation meeting. Foreign corporations doing business in Massachusetts must file with the commissioner of corporations a copy of its charter or certificate of incorporation, and a certificate of the amount of its capital stock, the amount paid in, and the manner of payment, subscribed and sworn to by president, treasurer, and majority of directors, and also file annual statements with the commissioner of corporations showing their condition and appointing the commissioner of corporations its attorney, upon whom service of process may be made.

Courts. *Terms and Jurisdiction.* Trial justices may severally hold courts within the counties for which they are appointed, and shall have original jurisdiction, exclusive of the superior court, of all actions of contract, tort, or replevin, where the debt or damages demanded or value of the property alleged to be detained does not exceed $100, and concurrent jurisdiction with the Superior Court of such actions where such amount exceeds $100 and is less than $300. Police and district courts may in their respective counties exercise the same powers, shall have the same jurisdiction, civil and criminal, and shall perform the same duties and be subject to the same liabilities as trial justices. The supreme judicial court has original and concurrent jurisdiction with the superior court, in actions for recovery of debt to the amount of $4,000 or over, in Suffolk County (Boston), and $1,000 or over, in the other counties of the State. Superior court has jurisdiction where the amount claimed exceeds $20. Municipal court of the city of Boston has jurisdiction concurrently with the superior court in the county of Suffolk, in actions where the debt does not exceed $2,000, provided one or more of the defendants resides or has his usual place of business in the city of Boston.

Depositions. The deposition of a witness without the State may be taken under a commission issued to a person in any other State or country by the court in which the case is pending, or it may be taken by a commissioner appointed by the governor for that purpose. Every deposition taken under a commission must be upon written interrogatories, to be exhibited to the adverse party, and cross-interrogatories may be filed by him if neither party to the action shall attend at the taking of the deposition or be represented by attorney.

Divorce. A divorce may be granted for adultery, impotence, cruelty, desertion for three consecutive years, intoxication, drunkenness by use of opium and other drugs, cruel and abusive treatment, neglect to support wife, sentence of five years or more imprisonment. The parties must have lived together as husband and wife in this State; and cause must have occurred in this State, unless the parties had theretofore lived in this State as husband and wife, and one of the parties lived here at time of cause; except that when libelant has lived here for five years next preceding filing of libel or for three years if parties lived here at time of marriage. A divorce may be granted for any lawful cause wherever it occurred. All decrees of divorce are granted nisi to become absolute in six months unless otherwise ordered. Either party may marry again but the libelee not within two years from entry of final decree.

Dower and Curtesy. A wife is entitled to dower in this State as at common law. If husband dies intestate and leaves no issue, the widow takes his real estate in fee to the amount of $5,000 and a life estate in one-half of the other real estate, or if she so elects may take her dower in the land not taken by her in fee. If he dies intestate and leaves no kindred she takes all his real estate. If a married woman dies leaving issue her husband shall hold all her real estate during his life as tenant by the curtesy. If they have had no issue he takes one-half of her real estate for his life. If she dies and leaves no issue he takes her real estate in fee to the amount of $5,000 and an estate by the curtesy in her other real estate. If she dies intestate and leaves no kindred he takes all her real estate in fee.

Executions can not issue until twenty-four hours after judgment rendered, and an original execution must be issued within one year after plaintiff is entitled to sue out the same. Executions in all courts are returnable within sixty days. There is no stay of execution except by special order of court. Executions may be served by levy upon real or personal estate of the debtor or by arrest when arrest is allowed. Certain personal property and real estate are exempt from levy.

Exemptions. Homestead, if recorded, to the value of $800. Necessary wearing apparel of family, certain specified articles of household furniture, and $300 worth in addition thereto; library, $50; tools and implements, $100; stock, $100; boats and fishing tackle, etc., $100; one cow, six sheep, one swine, and two tons of hay, sewing machine, necessary wearing apparel, pew in church, etc. Materials and stock designed and necessary for carrying on his trade and intended to be used or wrought therein, not exceeding $100 in value. Shares in co-operative associations not exceeding $20 in value, funds of railroad relief societies, assessment insurance benefits, uniforms, arms, and equipments of militia officers.

Frauds, Statute of. No contract for sale of goods for $50 or more shall be good unless the purchaser accepts and receives part, or gives something in part payment or unless a memorandum in writing is made of the bargain and signed by party to be charged. No action can be brought in the following cases unless the contract is in writing and is signed by party to be charged or his agent: 1. To charge an executor, administrator, or assignee in insolvency. 2. To charge a person for the debt of another. 3. On a contract for the sale of real estate or interest therein. 4. On an agreement not to be performed within one year.

Holidays. The following are legal holidays in this State: February 22d, April 19th, May 30th, July 4th, first Monday in September, Thanksgiving Day, Christmas. (Saturday after 12 o'clock noon for banking purposes.)

Interest. Legal rate, 6 per cent, which is allowed on judgments. There are no usury laws, except on loans less than $1,000, and any rate may be reserved or contracted for in writing, and rate reserved in note is payable after maturity of note as before; loans less than $1,000 shall be dischargable upon payment or tender of the sum actually borrowed and interest at rate of 18 per cent per annum, together with a sum for actual expenses of making the loan, not exceeding $5; all payments in excess of said rate shall be applied to discharge of the principal.

Judgments may be entered within four days of default, but do not constitute a lien upon realty or personalty of debtor not attached on the original writ. Are not outlawed for twenty years. Foreign judgments are proved by a copy of the record.

Limitation of Suits. Contracts or liabilities, express or implied and not under seal, six years; real actions, those upon an attested note, if suit is brought by original payee or his executor or administrator, and personal actions on contracts not limited, twenty years. Revivor: Part payment by the party sought to be charged or new promise to pay in writing. Absence from the State prevents the running of the statute of limitations as to a defendant until he comes into the State. The statute does not run against infants, married women during coverture, insane persons, those imprisoned, and those absent from the State.

Married Women. The real and personal estate of a married woman, acquired at any time, remains her sole and separate property, not subject to the control of her husband, nor liable for his debts. Married women may carry on trade or business, make contracts, sue and be sued, in all matters relating to their separate property, and such contracts are not binding upon the husband. Wife carrying on business on own account must record certificate with city or town clerk; neglect to do this renders her property so employed liable for husband's debts, and renders husband liable for her debts thus contracted. Transfers can not be made direct from husband to wife, but must be made through a third person. Wife can not deprive her husband of more than half of her personal property by will, nor can she impair his interest in her real estate as tenant by the curtesy without his written consent, or of her real estate not exceeding $5,000 in value, and a life estate in one-half of the balance, where no issue survives her. Widow takes dower as at common law, in one-third of her husband's real estate, and if there be no issue and husband dies intestate, she takes his real estate, in fee, to an amount not exceeding $5,000 in value, and a life estate in one-half of the balance. If husband dies intestate and leaves no kindred, she takes the whole of his real estate in fee.

Mortgages. Mortgages now in common use contain a provision authorizing a sale of premises in case of a breach of any of the conditions. Power of sale mortgages may be foreclosed by a sale in accordance with the provisions of the power contained in the mortgage, and an affidavit that the mortgagee has complied with the provisions of the mortgage shall be recorded in the registry of deeds within thirty days after the sale. Notice of the sale must be published once a week for three weeks (sale to be not less than twenty-one days after first publication), the publication to be in the city or town where property is situated, or, if no paper so published, then in a paper published in the county. Proper execution of the power of sale forever bars all right of redemption. Mortgages may also be foreclosed by entry and peaceable possession for three years, which entry must be certified by two witnesses. Possession may also be obtained by action at law.

Notes and Bills of Exchange. The law of negotiable instruments is codified by Stat. of 1898, Ch. 533, taking effect January 1, 1899. It does not apply to instruments made and delivered prior to that date.

An instrument to be negotiable must be in writing, signed by the maker or drawer; must be a promise to pay a sum certain in money, on demand or at a fixed time payable to order or bearer. An instrument payable upon a contingency is not negotiable. The validity and negotiable character of the instrument are not affected by the fact that it is not dated, or does not state when payable. An instrument is payable on demand when it is expressed payable on demand, at sight, or on presentation, or when no time for payment is expressed. When an instrument is payable on demand presentment must be made within a reasonable time; presentment must be made at a reasonable hour on a business day, at the place specified; when no place is specified or address given then at the usual place of business or residence; the instrument must be exhibited and when paid delivered to party paying it. Presentment for payment is dispensed with when the drawee is a fictitious person, or by waiver of presentment. Every negotiable instrument is payable at time fixed therein without grace; when the day of maturity falls on Sunday or a holiday the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that those payable on demand may at option of the holder be presented for payment before twelve o'clock noon on Saturday, when that entire day is not a holiday.

The acceptance of a bill of exchange must be in writing and signed by the drawee. The drawee is allowed twenty four hours after presentment to accept the bill.

When a foreign bill is dishonored by non-acceptance it must be protested for non-acceptance; if not so protested the drawer and indorsers are discharged.

A negotiable promissory note is an unconditional promise in writing by one person to another, signed by the maker, to pay on demand or at a fixed time a sum of money to order or to bearer. A check is a bill of exchange drawn on a bank, payable on demand. A check must be presented for payment within a reasonable time after its issue. When a check is certified the drawer and indorsers are released.

A Bank includes any person or association of persons carrying on business of banking, whether incorporated or not.

The Negotiable Instrument Act of Massachusetts is about the same as the law now in operation in New York, Connecticut, Colorado, Florida, Maryland, and Virginia. All persons becoming parties to promissory notes payable on time by a signature in blank on the back thereof, shall be entitled to notice of the non-payment thereof the same as indorsers. Checks drawn on a bank may be paid notwithstanding the death of drawer if presented within ten days after date, and a savings bank order if presented within 30 days after date.

Suits. Civil actions in general, except those concerning land (if one of the parties lives in the State), must be brought in the county where one of them lives or has his usual place of business. Where all parties are non-resident, action may be brought in any county. Attachment of property owned by defendants residing out of State sufficient to give jurisdiction in suit after notice published by order of court. Such notice to be given within one year from the entry of the suit. Persons commorant in State may also be arrested on mesne process and held to bail.

Taxes are assessed as of the first day of May in each year, and on real estate are a lien for two years after they are committed to the collector; but the collector may sell real estate for taxes after two years have elapsed, unless the estate has been alienated prior to the giving of the notice of such sale. If not paid on demand, collector may sell after advertisement. Owner, his heirs or assigns, may redeem within two years by paying or tendering to the collector when he exercises the power of taking, or to the purchaser of the sum paid

by him, with 10 per cent interest and all necessary intervening charges, and person having title may redeem in two years after notice if property is taxed to a person unknown, or to tenant or occupant not owner, or wrong person or mortgagee of record. The purchaser under a tax sale, if resident in the city or town where the estate is, must record his residence or place of business. If he resides elsewhere he must appoint an agent or attorney and record such appointment.

Transfer of Corporation Stock. The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee, for value, with a written transfer of the same, or a written power of attorney to sell, assign or transfer the same, signed by owner of certificate, shall be a sufficient delivery to transfer the title as against all parties.

Trustee Process. All personal actions except replevin, and actions of tort for malicious prosecution, slander, libel, or assault and battery may be begun by trustee process, and goods, effects, or credits of defendant in hand of a third person may be attached and held to satisfy final judgment.

Wills. Any person of full age may make a will disposing of his estate. The will must be signed by the testator and attested by three witnesses in presence of the testator. A married woman may make a will, but such will shall not deprive her husband of his tenancy by the curtesy in her real estate, or of a life estate in one-half thereof if they have had no issue born alive.

SYNOPSIS OF THE LAWS OF MICHIGAN

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by JULIAN G. DICKINSON, Esq., Attorney at Law, Detroit. (*See Card in Attorneys' List.*)

Accounts. Assignable by parol; may be mortgaged; not necessary to file or record.

Acknowledgments. Deeds and mortgages of lands or any interest therein, to entitle the same to be recorded or read in evidence, executed within this State, must be witnessed by two persons, and may be acknowledged before any judge or commissioner of a court of record, a notary public, or a justice of the peace. In any other State, Territory, or District of the United States, before any judge of a court of record, whose certificate has seal of his court attached, a notary public under his official seal, or before any commissioner appointed by the governor of Michigan for that purpose, or before any officer authorized by such State, etc., to take acknowledgment of deeds. Unless taken before such commissioner, a judge of court of record, with seal of his court attached, or before a notary public who certifies under his official seal, such deed should have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment is taken, under the seal of his office, or the certificate of the secretary of the State or Territory where taken, under his seal of office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be; that he is acquainted with the handwriting of such officer, and that he verily believes the signature of such officer subscribed thereto to be genuine, and that the instrument is executed and acknowledged according to the laws of such State, Territory or District. In any foreign country, it shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such (Act No. 217, 1889), and may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, or consul, or vice-consul, or consular agent of the United States appointed to reside therein, such acknowledgment to be certified thereon by the officer under his hand, and if by a notary, his seal of office shall be affixed to such certificate. The forms of acknowledgment now in use in this State or the following may be used: Begin with the caption specifying the state and place where taken.

1. In case of natural persons acting in their own right:

On this....day of....18.. before me personally appeared A. B. C. D., to me known to be the person (or persons) who executed the foregoing instrument and acknowledged that he (or they) executed the same as the free act and deed of said A. B. C. D.

2. In case of natural persons acting by attorney:

On this....day of....19.. before me personally appeared A. B., to me known to be the person who executed the foregoing instrument *in behalf of C. D.* and acknowledged the same as *the free act and deed of C. D.*

3. In the case of corporations or joint stock associations:

On this....day of....19.. before me appeared A. B., to me personally known, who being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent) of said company or said association (describing it by name), and that the seal affixed to said instrument is the corporate seal of said corporation (or association) and that said instrument was signed and sealed on behalf of said corporation, by authority of its board of directors, and said A. B. acknowledged instrument to be the free act and deed of said corporation (or association). If corporation has no seal, omit the words "the seal affixed to said instrument," and add at the end of affidavit "and that said corporation (or association) has no seal." The officer before whom taken should state his title with his signature. Assignments, and discharges, and releases require like acknowledgments as above.

4. Married women's acknowledgment, in same form as if she were sole.

Administration of Estates. Probate court in each county has exclusive jurisdiction of the administration of estates of intestate deceased persons, and probate of wills of deceased persons having property therein. Deceased intestate leaving widow, she first entitled to appointment as administratrix; if she declines, next of kin; if they neglect for thirty days to apply, any creditor may apply for the appointment of some suitable person. Special administrator may be appointed where for any cause general administration is delayed. Executors nominated in wills are entitled to letters testamentary on probated will.

Affidavits not evidence in actions at law, except of the amount due on open and stated accounts, served with process as commencement of suit; in such suit such accounts, unless denied by affidavit of the defendant with his plea, the affidavit makes a prima facie case for judgments in the circuit and justices courts. Such affidavits should specify the name of plaintiff; if a firm, the individual members, name of the party making the affidavit, and his agency, the amount due plaintiff over and above all legal setoffs, an exhibit statement of account, and must be sworn to before a notary public or commissioner appointed by the governor of this State.

Aliens may inherit or purchase personal and real estate and hold real estate in fee, and may convey real estate by deed or by will, same as citizens of the State.

Appeals. (*See Courts.*)

Arbitration. The law establishing a State court of mediation and arbitration: the governor may, whenever he shall deem it necessary, with the advice and consent of senate, appoint a State court which is to consist of three competent persons. That whenever any grievance or dispute of any nature shall arise between employer and employes, it shall be lawful to submit the same in writing to such court for settlement. (3 How. Am. Stat. 6534, S. 8, 3534, M. 7.)

All persons except infants, married women, and persons of unsound mind may, by instrument in writing, submit to the decision of one or more arbitrators, any controversy existing between them which might be subject to an action at law or in chancery, and thereby agree that a judgment shall be rendered upon the award in any circuit court to be thereby designated, excepting as to claims of any person to any estate in fee or for life on real estate.

Arrest. Defendants in all personal actions other than those arising on contract, and in actions when the claim is for money collected by any public officer, or for misconduct or neglect in office or professional employment, or upon promise to marry, by writ of *capias ad respondendum;* also under fraudulent debtors' act, in other actions than those aforesaid, when a creditor has commenced suit or obtained judgment he may apply for a warrant of arrest in such suits and on satisfactory evidence adduced to judge of the court where such suit or judgment is obtained of the debt and establishing: *a*, that defendant is about to remove any of his property out of jurisdiction of such court with intent to defraud his creditors; *b*, that he has property or rights in action which he fraudulently conceals, or stocks, money, or evidence of debt which he unjustly refuses to apply in payment of the judgment or decree; *c*, that he has assigned, etc., or about to dispose of any of his property with intent to defraud his creditors; *d*, that he fraudulently contracted the debt in suit, a warrant of arrest shall issue. (Chap. 304, How. Stat. Mich.) No woman can be arrested on civil process.

Assignments and Insolvency Laws of the State are superseded by United States bankrupt act which went into effect July 1, 1898.

Attachment. Process will issue on affidavit that there is a debt *due* upon express or implied contract, and showing either that debtor has absconded, or is about to abscond from the State; has assigned, removed, or concealed his property with intent to defraud or fraudulently contracted the debt; or is non-resident, or a foreign corporation. Attachment may now be sued out for debt to become due *in future* upon showing reasons satisfactory to circuit judge, but judgment can not be rendered until debt is due. *Actions of tort* against non-residents may be commenced by attachment, affidavit must be made describing the cause of action, which must have arisen in this State; or accrued while plaintiff was bona fide resident, and showing that defendant is carrying on business in the State, or owns property therein.

Garnishment. Process may be issued from any court in which an original suit is commenced to recover on contract, express or implied, and in all cases where there is any sum unpaid upon any judgment or decree of any of the several courts or municipal courts of civil jurisdiction of this State; or upon any transcript of a judgment filed in said courts, upon filing affidavit of plaintiff or his agent with the clerk of the court at the time of, or at any time after, commencement of suit, stating amount due plaintiff and showing that the garnishee has property credits or effects in his hands belonging to the principal defendant, or that the garnishee is indebted to such defendant, etc.; and in such proceeding indebtedness of the garnishee to the principal defendant or property in his hands held by fraud, or property of any kind subject to execution in garnishee's hands, may be recovered for the satisfaction of any judgment recovered in the suit. Wages of any householder, having a family, to the extent of $25, are exempt from garnishment. Money or other benefit funds to be paid by Ancient Order United Workmen corporation exempt from attachment or garnishment. Garnishees liable for property received under conveyance or mortgages that are fraudulent as to creditors, and for the value of such property if disposed of by garnishees before or after garnishment. Appeal cases from justice's courts. All garnishments are returned as auxiliary to appellate court and thereafter conducted in that court same as if originally commenced there. Garnishees may by filing bond to pay any judgment against them have discontinuance of garnishment.

Banks. Laws authorizing the business of banking, and to establish a banking department provide that any number of persons, not less than five, may associate to establish: 1. Offices of discount and deposit, known as commercial banks. 2. Offices of loan and deposit, known as savings banks. 3. Banks having departments for both said classes of business. The aggregate amount of capital stock not to be less than $100,000, except that in any city or village with a population of 1,500 the capital may be not less than $15,000; population not exceeding five thousand, capital not less than $25,000; population not exceeding twenty thousand, capital not less than $50,000. These provisions as to capital not to apply to banks heretofore organized. Banks shall not take any of their capital stock as security; shall not be the holder or purchaser of any portion of its capital stock, unless necessary to prevent loss upon debt previously contracted; stock so purchased to be held no longer than six months if it can be sold for cost, and must be sold for the best price within one year. Articles of incorporation, specifying: 1. Name assumed, which must not be similar to name of any other State bank. 2. County, city, or village where located, and to conduct business. 3. Nature of its business relative to class aforesaid. 4. Amount of capital stock which shall be in shares of $100 each. 5. Names and residences of stockholders; number of shares held by each. 6. Period of organization, not to exceed thirty years. 7. To be executed in triplicate and acknowledged before an officer of this State authorized to take acknowledgments, one recorded in the county clerk's office of the county where bank is to be located, one filed with banking department, and one with the secretary of State. Copies certified by said officers admissible in all courts. Articles may be amended, by vote of two-thirds of capital stock. But shall exercise powers necessary to carry on business; shall not take or receive more than legal rate of interest in advance on loans.

Capital Stock. Fifty per cent shall be paid in before commencing business, and the remainder by monthly installments of 10 per cent. Failure to pay any installment may sell the stock of delinquent stockholder at public sale on twenty days' notice. If no bidder, the amount paid in shall be forfeited and such stock sold within six months thereafter; and if not sold it may be canceled and deducted from the capital. If sold

any surplus realized shall be returned to stockholder, his heirs or assigns. If cancellation reduces the capital stock below the minimum, must be increased within thirty days to required amount by subscriptions. Commissioner shall examine condition as to the provisions of the act required to entitle it to engage in the banking business, and within thirty days after receiving notice of the payments of the capital, give to such bank a certificate authorizing business, etc.; withhold such certificate whenever he has reason to believe such organization is for any other than legitimate business. This certificate shall be published for six weeks in the city, village, or county where the bank is located, the first publication within ten days after the receipt of such certificate.

Shares deemed personal property; transferable on the books of the bank as its by-laws direct; no transfer shall be valid so long as registered holder of stock is liable as principal debtor, surety or otherwise for any debt due and unpaid to such bank; in such case no dividends shall be paid on such stock, but retained and applied to discharge such liabilities. Shares are subject to attachment and execution against stockholder.

Capital may be reduced or increased at any time by two-thirds vote. Certificate thereof, by its officers and a majority of the directors to be filed as required for articles; but no increase shall be valid unless subscribed and paid in; and no reduction less than the required capital, or be valid until approved by said commissioner. Banks may purchase, hold and convey real estate for the following purposes, only: Such as is necessary for convenient transaction of business, including with its offices other apartments to rent which shall not exceed in value 50 per cent of paid capital; conveyed for debts, purchased at sales under judgments or decrees upon securities; but at such sales shall not bid larger amount than debt; real estate acquired in satisfaction of debts shall be held no longer than five years, and within thirty days thereafter must be sold at private or public sale.

Directors. Bank to be managed by a board of not less than five, to be elected by the stockholders; hold office for one year and until successors are chosen and qualified; first board to be chosen before authorized to commence business; thereafter at annual meetings of stockholders to be held on second Tuesday in December of each year; each share entitled to one vote for each director; no stockholder who is indebted to the bank on debt past due entitled to vote; may vote by proxy; no officer, clerk, teller, or bookkeeper shall act as proxy. Vacancy shall be filled by the board until next election. Directors must own and hold not less than ten (10) shares (in banks with $15,000 capital five shares), and shall take and subscribe specified oath. Board may declare dividends—so much of net profits as they deem expedient. Before any dividend not less than 10 per cent of net profits for preceding half year shall be carried to surplus fund until it amounts to 20 per cent of capital.

National Banks, dissolved, may organize under this act with approval of commissioner; authority of its stockholders must be set forth in the articles; assets of such national bank be vested in such State bank subject to liabilities. State banks may organize under laws of United States as national banks, and hold the assets acquired during existence subject to liabilities.

Reports four times a year under oath to commissioner, according to forms which he shall prescribe, to show resources and liabilities of any past day's business. Such reports to be published in newspapers in respective localities; special reports may be required; reports of dividends and amount carried to surplus to be made within ten days after such dividends are declared.

Commercial Banks. Loans not to exceed 50 per cent of capital on real estate security, by resolution and two-thirds vote of the directors, except to secure certain debts. Interest may be allowed on accounts or certificates of deposit, deposits payable on demand and without notice, except otherwise provided by contract. Shall keep on hand 15 per cent of deposits; in cities of over 100,000 inhabitants 20 per cent—one-half in lawful money, other half in funds payable on demand deposited in designated approved banks. If below required reserve, must stop increase of liabilities and commissioner may notify to make good the reserve.

Savings Banks. Same powers as commercial banks as to receiving deposits. Deposits of such banks shall be paid at such time or times, with such interest and under such regulations as directors from time to time prescribe; shall keep on hand 15 per cent of its total deposits, one-third in money, and the balance on deposit, with approved national or State banks, or invested in U. S. bonds; three-fifths of the remainder shall be invested in bonds of U. S. or of this or any other State of the U. S. (provided any such State has not in ten years repudiated its debt or failed to pay same or the interest), or in the public debt or bonds of any city, county, township, village, or school district of any State of the U. S. which is duly authorized; also in negotiable notes secured by such bonds, or in mortgages on unincumbered real estate worth double amount loaned; the remainder in notes, etc., with collateral security of personal property worth 10 per cent more than the loan and interest; or may be deposited in any national banks or trust companies in cities in this or any other State approved by the commissioner; and a portion of the remainder, not exceeding the capital and additional liability of stockholders, may be invested in approved negotiable paper. Its deposits in any one bank not to exceed 10 per cent of its total funds. Pass books shall be issued to depositors in savings department, containing rules, etc.

Banks combining Commercial and Savings Banks shall keep separate books of account for each class; shall not issue any bill, or note, or certificate to circulate as money, nor issue post bills. Investments and reserves relating to savings to be kept separate from other business, and with deposits be held solely for payment of savings depositors; may issue foreign bills of exchange payable thirty days sight, with customary usuance. Such banks shall not issue any bill, note, or certificate to circulate as money; nor issue post notes. Deposits by minors may be paid to them though they have no guardian.

Existing State Banks, abridged, modified, or enlarged to conform to provisions of this act. As to all future transactions, no renewal or extension of any existing loan or investment shall be made, unless necessary to avoid loss or embarrassment. All past due notes, etc., of existing banks, not secured by mortgage, remaining unpaid for six months, shall be charged off to the profit and loss. Must file with commissioner certificate of the bank's officers, conforming to the requirements relative to articles or reorganize.

The "State Banking Department," separate bureau in the State department, to have charge of the execution of the banking laws.

Commissioner of the Banking Department, chief officer, appointed by the governor, by and with the advice and consent of senate; he to appoint or remove his deputy, to perform his duties during his absence or inability. To examine once in each year cash, bills, securities, etc., of each bank he, his clerks, and examiner bound by oath to keep secrets, all facts found except such facts as he is required to report upon or take official action relative to bank's affairs, examine on oath any officers, agents, clerks, depositors, etc.; willful false swearing deemed perjury; ascertain whether bank transacts business as prescribed; make annual reports to State treasurer, to be published with treasurer's report, giving capital, debts, liabilities, means, resources, and amount of lawful money held, etc.; and amount paid to creditors of any bank closed up.

Stockholders individually liable, equally and ratably, and not one for another, for the benefit of depositors to the amount of par value of stock in addition to said stock (except persons holding stock as executors, administrators, guardians or trustees, or as collateral security, who shall not be personally liable, but trust and estate assets and funds shall be liable), persons pledging stock liable. Such liability may be enforced in suit at law or in equity by any bank in liquidation, or by any receiver, or other officer succeeding to the rights of such bank. All transfers of notes, securities or other property, and payments of money after acts of insolvency, or in contemplation thereof, with a view to prevent application of assets, as prescribed, or to prefer one creditor over another, shall be null and void.

Legal Process to be served on the president, cashier, or treasurer, in the county where bank is located, or where plaintiff resides, or by leaving attested copy of process at banking house, during banking hours, with teller, clerk, or any officer of the bank.

Total Liabilities of any bank, person, firm (including liabilities of the members of such firm), or corporation for money loaned by bank shall at no time exceed one-tenth part of the capital and surplus of such bank, discount of bills of exchange and commercial paper by actual owner not considered; these provisions not to apply to real estate loans, or other authorized collateral securities. By two-thirds vote of the directors it may be increased to one-fifth. *Liquidation*, may go into liquidation and be closed by vote of two-thirds of capital; refusing to pay deposits or becoming insolvent, to be wound up.

Legislature at any regular session may alter or amend laws by two-thirds vote. Not necessary to submit such amendments to popular vote.

Incorporated Trust, Deposit, and Security Companies. Not less than seven persons may associate; capital stock limited to not less than $300,000; not to exceed $5,000,000, except in cities of less than 100,000 inhabitants, capital not less than $150,000. Capital may be increased or decreased by two-thirds vote of the shares, within the limits above specified. Fifty per cent cash of the capital to be paid in and proof by affidavit to the department before authorized to commence business—balance of capital to be paid within six months. Proceedings to sell at public auction stock not paid for, authorized on thirty days' notice—if can not be so sold, may be at private sale; otherwise forfeited and canceled; to deposit with state treasurer at least 50 per cent of amount of capital stock in bonds, or mortgages on unincumbered real estate in the State worth double amount secured; or public stocks and bonds of U. S. or of any State of the U. S not defaulted on its obligations within ten years; or of any municipality of this State, or of any other State of the U. S. duly authorized to be held by the State treasurer in trust as security to depositors and creditors; the said treasurer to pay over interest and income of such securities received by him, or may authorize such company to collect same.

Articles to be made and filed as required of banks. Directors, not less than seven to manage its affairs; same qualifications, powers, and term of office as bank directors. Have power to take, receive, and hold, repay, reconvey, and dispose of any effects and property, real and personal, granted, committed, or conveyed, to it upon any terms or trusts by any persons, married women, minors, corporations or by any court in this State and to administer the duties of trusts, and to act as agents or attorneys for the transaction of business, management of estates, collection of rents, interest, dividends, mortgages, bonds, bills, notes, and securities for moneys, and for issuing, negotiating, registering, transferring or countersigning certificates of stock, bonds, or other obligations of any corporation, and to manage any sinking fund; to accept and execute offices of executor, administrator, trustee, receiver or assignee, and guardian; lawful for any court to appoint such corporation to any such office of trustee, etc., and without other security than said deposit with said state treasurer; to have power to loan money on real estate and collateral security and execute and issue notes debentures payable at a future date, and to pledge mortgages on real estate and other securities as security therefor; but not to issue bills to circulate as money, or buy or sell bank exchange, or do general banking business; to receive on deposit for safe keeping and storage, gold and silver plate, money, stocks security, and other valuables, and personal property, and to rent use of safes and receptacles on its premises; to become sureties for administrators, guardians, etc., where law requires sureties; to insure validity of title in real estate transfers, and to have a lien on deposits received as provided in this act—such lien to be paid in two years, and if not so paid, or in case property received on deposit shall not be called for in two years from date such lien accrued, such property may be sold at public auction, on like notices required for constables' sales on execution, apply proceeds to satisfaction of such lien and costs of sale, balance to be paid to person who deposited, or legal representative; to lease, purchase, hold, and convey real estate as corporate property necessary for its office and other apartments in same building, to rent as a source of income not to exceed 50 per cent of its paid-up capital and surplus; it may accept real or personal estate in trust created pursuant to laws of State or of the United States, and such personal estate as is necessary to carry on its business, also all real or personal estate in the settlement of claims arising in its transactions, and to execute necessary receipts, certificates, and contracts. No such real estate shall be received as an asset longer than five years. Directors may invest remaining capital stock and other moneys received in trust, in bonds and mortgages of same character as those required to be deposited, or in such real or personal security as they deem proper. Shall not have right to issue bills to circulate as money, or buy or sell exchange, or do a general banking business. Shall keep on hand funds equal to twenty per cent of its matured obligations, three-fourths of which may be deposited in any bank or trust company approved by commissioner. Legal process same as against banks. Taxation same as against banks. Shares personal property transferable same as in banks. Stockholders individually liable same as in banks. Reports four times each year to commissioner, and when he requests, under oath, showing resources and liabilities; report in ten days after any dividend declared, of amount of dividend and net earnings in excess. Inspection and supervision by commissioner of State banking department same as banks; may be wound up in case of insolvency by appointment of receiver on proper application of said commissioner. Provisions of this act to govern all existing like corporations heretofore organized except as to amount of their capital stock; must file with said commissioner certificate in conformity with this act as to articles of corporation.

Taxation of State and National Bank Stock. All shares in banks organized in this State at their cash value, deducting value of their real estate and mortgages; shares assessed to owners where the bank is located. Owned by a person residing within the county where the bank is located, assessed in the town where he resides. Bona fide indebtedness of stockholder may be set off against taxation of bank shares. In case of any tax on shares of any bank is not paid by stock-

by him, with 10 per cent interest and all necessary intervening charges, and person having title may redeem in two years after notice if property is taxed to a person unknown, or to tenant or occupant not owner, or wrong person or mortgagee of record. The purchaser under a tax sale, if resident in the city or town where the estate is, must record his residence or place of business. If he resides elsewhere he must appoint an agent or attorney and record such appointment.

Transfer of Corporation Stock. The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee, for value, with a written transfer of the same, or a written power of attorney to sell, assign or transfer the same, signed by owner of certificate, shall be a sufficient delivery to transfer the title as against all parties.

Trustee Process. All personal actions except replevin, and actions of tort for malicious prosecution, slander, libel, or assault and battery may be begun by trustee process, and goods, effects, or credits of defendant in hand of a third person may be attached and held to satisfy final judgment.

Wills. Any person of full age may make a will disposing of his estate. The will must be signed by the testator and attested by three witnesses in presence of the testator. A married woman may make a will, but such will shall not deprive her husband of his tenancy by the curtesy in her real estate, or of a life estate in one-half thereof if they have had no issue born alive.

SYNOPSIS OF THE LAWS OF MICHIGAN

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by JULIAN G. DICKINSON, Esq., Attorney at Law, Detroit. (*See Card in Attorneys' List.*)

Accounts. Assignable by parol; may be mortgaged; not necessary to file or record.

Acknowledgments. Deeds and mortgages of lands or any interest therein, to entitle the same to be recorded or read in evidence, executed within this State, must be witnessed by two persons, and may be acknowledged before any judge or commissioner of a court of record, a notary public, or a justice of the peace. In any other State, Territory, or District of the United States, before any judge of a court of record, whose certificate has seal of his court attached, a notary public under his official seal, or before any commissioner appointed by the governor of Michigan for that purpose, or before any officer authorized by such State, etc., to take acknowledgment of deeds. Unless taken before such commissioner, a judge of court of record, with seal of his court attached, or before a notary public who certifies under his official seal, such deed should have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment is taken, under the seal of his office, or the certificate of the secretary of the State or Territory where taken, under his seal of office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be; that he is acquainted with the handwriting of such officer, and that he verily believes the signature of such officer subscribed thereto to be genuine, and that the instrument is executed and acknowledged according to the laws of such State, Territory or District. In any foreign country, it shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such (Act No. 217, 1889), and may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, or consul, or vice-consul, or consular agent of the United States appointed to reside therein, such acknowledgment to be certified thereon by the officer under his hand, and if by a notary, his seal of office shall be affixed to such certificate. The forms of acknowledgment now in use in this State or the following may be used: Begin with the caption specifying the state and place where taken.

1. In case of natural persons acting in their own right:

On this....day of....18.. before me personally appeared A. B. C. D., to me known to be the person (or persons) who executed the foregoing instrument and acknowledged that he (or they) executed the same as the free act and deed of said A. B. C. D.

2. In case of natural persons acting by attorney:

On this....day of....19.. before me personally appeared A. B., to me known to be the person who executed the foregoing instrument *in behalf of C. D.* and acknowledged the same as *the free act and deed of C. D.*

3. In the case of corporations or joint stock associations:

On this....day of....19.. before me appeared A. B., to me personally known, who being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent) of said company or said association (describing it by name), and that the seal affixed to said instrument is the corporate seal of said corporation (or association) and that said instrument was signed and sealed on behalf of said corporation, by authority of its board of directors, and said A. B. acknowledged instrument to be the free act and deed of said corporation (or association). If corporation has no seal, omit the words "the seal affixed to said instrument," and add at the end of affidavit "and that said corporation (or association) has no seal." The officer before whom taken should state his title with his signature. Assignments, and discharges, and releases require like acknowledgments as above.

4. Married women's acknowledgment, in same form as if she were sole.

Administration of Estates. Probate court in each county has exclusive jurisdiction of the administration of estates of intestate deceased persons, and probate of wills of deceased persons having property therein. Deceased intestate leaving widow, she first entitled to appointment as administratrix; if she declines, next of kin; if they neglect for thirty days to apply, any creditor may apply for the appointment of some suitable person. Special administrator may be appointed where for any cause general administration is delayed. Executors nominated in wills are entitled to letters testamentary on probated will.

Affidavits not evidence in actions at law, except of the amount due on open and stated accounts, served with process as commencement of suit; in such suit such accounts, unless denied by affidavit of the defendant with his plea, the affidavit makes a prima facie case for judgments in the circuit and justices courts. Such affidavits should specify the name of plaintiff; if a firm, the individual members, name of the party making the affidavit, and his agency, the amount due plaintiff over and above all legal setoffs, an exhibit statement of account, and must be sworn to before a notary public or commissioner appointed by the governor of this State.

Aliens may inherit or purchase personal and real estate and hold real estate in fee, and may convey real estate by deed or by will, same as citizens of the State.

Appeals. (*See Courts.*)

Arbitration. The law establishing a State court of mediation and arbitration: the governor may, whenever he shall deem it necessary, with the advice and consent of senate, appoint a State court which is to consist of three competent persons. That whenever any grievance or dispute of any nature shall arise between employer and employes, it shall be lawful to submit the same in writing to such court for settlement. (3 How. Am. Stat. 6534, S. S. 3534, M. 7.)

All persons except infants, married women, and persons of unsound mind may, by instrument in writing, submit to the decision of one or more arbitrators, any controversy existing between them which might be subject to an action at law or in chancery, and thereby agree that a judgment shall be rendered upon the award in any circuit court to be thereby designated, excepting as to claims of any person to any estate in fee or for life on real estate.

Arrest. Defendants in all personal actions other than those arising on contract, and in actions when the claim is for money collected by any public officer, or for misconduct or neglect in office or professional employment, or upon promise to marry, by writ of *capias ad respondendum;* also under fraudulent debtors' act, in other actions than those aforesaid, when a creditor has commenced suit or obtained judgment he may apply for a warrant of arrest in such suits and on satisfactory evidence adduced to judge of the court where such suit or judgment is obtained of the debt and establishing: *a*, that defendant is about to remove any of his property out of jurisdiction of such court with intent to defraud his creditors; *b*, that he has property or rights in action which he fraudulently conceals, or stocks, money, or evidence of debt which he unjustly refuses to apply in payment of the judgment or decree; *c*, that he has assigned, etc., or about to dispose of any of his property with intent to defraud his creditors; *d*, that he fraudulently contracted the debt in suit, a warrant of arrest shall issue. (Chap. 304, How. Stat. Mich.) No woman can be arrested on civil process.

Assignments and Insolvency Laws of the State are superseded by United States bankrupt act which went into effect July 1, 1898.

Attachment. Process will issue on affidavit that there is a debt *due* upon express or implied contract, and showing either that debtor has absconded, or is about to abscond from the State; has assigned, removed, or concealed his property with intent to defraud or fraudulently contracted the debt; or is non-resident, or a foreign corporation. Attachment may now be sued out for debt to become due *in future* upon showing reasons satisfactory to circuit judge, but judgment can not be rendered until debt is due. *Actions of tort* against non-residents may be commenced by attachment, affidavit must be made describing the cause of action, which must have arisen in this State; or accrued while plaintiff was bona fide resident, and showing that defendant is carrying on business in the State, or owns property therein.

Garnishment. Process may be issued from any court in which an original suit is commenced to recover on contract, express or implied, and in all cases where there is any sum unpaid upon any judgment or decree of any of the several courts or municipal courts of civil jurisdiction of this State; or upon any transcript of a judgment filed in said courts, upon filing affidavit of plaintiff or his agent with the clerk of the court at the time of, or at any time after, commencement of suit, stating amount due plaintiff and showing that the garnishee has property credits or effects in his hands belonging to the principal defendant, or that the garnishee is indebted to such defendant, etc.; and in such proceeding indebtedness of the garnishee to the principal defendant or property in his hands held by fraud, or property of any kind subject to execution in garnishee's hands, may be recovered for the satisfaction of any judgment recovered in the suit. Wages of any householder, having a family, to the extent of $25, are exempt from garnishment. Money or other benefit funds to be paid by Ancient Order United Workmen corporation exempt from attachment or garnishment. Garnishees liable for property received under conveyance or mortgages that are fraudulent as to creditors, and for the value of such property if disposed of by garnishees before or after garnishment. Appeal cases from justice's courts. All garnishments are returned as auxiliary to appellate court and thereafter conducted in that court same as if originally commenced there. Garnishees may by filing bond to pay any judgment against them have discontinuance of garnishment.

Banks. Laws authorizing the business of banking, and to establish a banking department provide that any number of persons, not less than five, may associate to establish: 1. Offices of discount and deposit, known as commercial banks. 2. Offices of loan and deposit, known as savings banks. 3. Banks having departments for both said classes of business. The aggregate amount of capital stock not to be less than $100,000, except that in any city or village with a population of 1,500 the capital may be not less than $15,000; population not exceeding five thousand, capital not less than $25,000; population not exceeding twenty thousand, capital not less than $50,000. These provisions as to capital not to apply to banks heretofore organized. Banks shall not take any of their capital stock as security; shall not be the holder or purchaser of any portion of its capital stock, unless necessary to prevent loss upon debt previously contracted; stock so purchased to be held no longer than six months if it can be sold for cost, and must be sold for the best price within one year. Articles of incorporation, specifying: 1. Name assumed, which must not be similar to name of any other State bank. 2. County, city, or village where located, and to conduct business. 3. Nature of its business relative to class aforesaid. 4. Amount of capital stock which shall be in shares of $100 each. 5. Names and residences of stockholders; number of shares held by each. 6. Period of organization, not to exceed thirty years. 7. To be executed in triplicate and acknowledged before an officer of this State authorized to take acknowledgments, one recorded in the county clerk's office of the county where bank is to be located, one filed with banking department, and one with the secretary of State. Copies certified by said officers admissible in all courts. Articles may be amended, by vote of two-thirds of capital stock. But shall exercise powers necessary to carry on business; shall not take or receive more than legal rate of interest in advance on loans.

Capital Stock. Fifty per cent shall be paid in before commencing business, and the remainder by monthly installments of 10 per cent. Failure to pay any installment may sell the stock of delinquent stockholder at public sale on twenty days' notice. If no bidder, the amount paid in shall be forfeited and such stock sold within six months thereafter; and if not sold it may be canceled and deducted from the capital. If sold

any surplus realized shall be returned to stockholder, his heirs or assigns. If cancellation reduces the capital stock below the minimum, must be increased within thirty days to required amount by subscriptions. Commissioner shall examine condition as to the provisions of the act required to entitle it to engage in the banking business, and within thirty days after receiving notice of the payments of the capital, give to such bank a certificate authorizing business, etc.; withhold such certificate whenever he has reason to believe such organization is for any other than legitimate business. This certificate shall be published for six weeks in the city, village, or county where the bank is located, the first publication within ten days after the receipt of such certificate.

Shares deemed personal property; transferable on the books of the bank as its by-laws direct; no transfer shall be valid so long as registered holder of stock is liable as principal debtor, surety or otherwise for any debt due and unpaid to such bank; in such case no dividends shall be paid on such stock, but retained and applied to discharge such liabilities. Shares are subject to attachment and execution against stockholder.

Capital may be reduced or increased at any time by two-thirds vote. Certificate thereof, by its officers and a majority of the directors to be filed as required for articles; but no increase shall be valid unless subscribed and paid in; and no reduction less than the required capital, or be valid until approved by said commissioner. Banks may purchase, hold and convey real estate for the following purposes, only: Such as is necessary for convenient transaction of business, including with its offices other apartments to rent which shall not exceed in value 50 per cent of paid capital; conveyed for debts, purchased at sales under judgments or decrees upon securities; but at such sales shall not bid larger amount than debt; real estate acquired in satisfaction of debts shall be held no longer than five years, and within thirty days thereafter must be sold at private or public sale.

Directors. Bank to be managed by a board of not less than five, to be elected by the stockholders; hold office for one year and until successors are chosen and qualified; first board to be chosen before authorized to commence business; thereafter at annual meetings of stockholders to be held on second Tuesday in December of each year; each share entitled to one vote for each director; no stockholder who is indebted to the bank on debt past due entitled to vote; may vote by proxy; no officer, clerk, teller, or bookkeeper shall act as proxy. Vacancy shall be filled by the board until next election. Directors must own and hold not less than ten (10) shares (in banks with $15,000 capital five shares), and shall take and subscribe specified oath. Board may declare dividends—so much of net profits as they deem expedient. Before any dividend not less than 10 per cent of net profits for preceding half year shall be carried to surplus fund until it amounts to 20 per cent of capital.

National Banks, dissolved, may organize under this act with approval of commissioner; authority of its stockholders must be set forth in the articles; assets of such national bank be vested in such State bank subject to liabilities. State banks may organize under laws of United States as national banks, and hold the assets acquired during existence subject to liabilities.

Reports four times a year under oath to commissioner, according to forms which he shall prescribe, to show resources and liabilities of any past day's business. Such reports to be published in newspapers in respective localities; special reports may be required; reports of dividends and amount carried to surplus to be made within ten days after such dividends are declared.

Commercial Banks. Loans not to exceed 50 per cent of capital on real estate security, by resolution and two-thirds vote of the directors, except to secure certain debts. Interest may be allowed on accounts or certificates of deposit, deposits payable on demand and without notice, except otherwise provided by contract. Shall keep on hand 15 per cent of deposits; in cities of over 100,000 inhabitants 20 per cent—one-half in lawful money, other half in funds payable on demand deposited in designated approved banks. If below required reserve, must stop increase of liabilities and commissioner may notify to make good the reserve.

Savings Banks. Same powers as commercial banks as to receiving deposits. Deposits of such banks shall be paid at such time or times, with such interest and under such regulations as directors from time to time prescribe; shall keep on hand 15 per cent of its total deposits, one-third in money, and the balance on deposit, with approved national or State banks, or invested in U. S. bonds; three-fifths of the remainder shall be invested in bonds of U. S. or of this or any other State of the U. S. (provided any such State has not in ten years repudiated its debt or failed to pay same or the interest), or in the public debt or bonds of any city, county, township, village, or school district of any State of the U. S. which is duly authorized; also in negotiable notes secured by such bonds, or in mortgages on unincumbered real estate worth double amount loaned; the remainder in notes, etc., with collateral security of personal property worth 10 per cent more than the loan and interest; or may be deposited in any national banks or trust companies in cities in this or any other State approved by the commissioner; and a portion of the remainder, not exceeding the capital and additional liability of stockholders, may be invested in approved negotiable paper. Its deposits in any one bank not to exceed 10 per cent of its total funds. Pass books shall be issued to depositors in savings department, containing rules, etc.

Banks combining Commercial and Savings Banks shall keep separate books of account for each class; shall not issue any bill, or note, or certificate to circulate as money, nor issue post bills. Investments and reserves relating to savings to be kept separate from other business, and with deposits be held solely for payment of savings depositors; may issue foreign bills of exchange payable thirty days sight, with customary usuance. Such banks shall not issue any bill, note, or certificate to circulate as money; nor issue post notes. Deposits by minors may be paid to them though they have no guardian.

Existing State Banks, abridged, modified, or enlarged to conform to provisions of this act. As to all future transactions, no renewal or extension of any existing loan or investment shall be made, unless necessary to avoid loss or embarrassment. All past due notes, etc., of existing banks, not secured by mortgage, remaining unpaid for six months, shall be charged off to the profit and loss. Must file with commissioner certificate of the bank's officers, conforming to the requirements relative to articles or reorganize.

The "State Banking Department," separate bureau in the State department, to have charge of the execution of the banking laws.

Commissioner of the Banking Department, chief officer, appointed by the governor, by and with the advice and consent of senate; he to appoint or remove his deputy, to perform his duties during his absence or inability. To examine once in each year cash, bills, securities, etc., of each bank he, his clerks, and examiner bound by oath to keep secrets, all facts found except such facts as he is required to report upon or take official action relative to bank's affairs, examine on oath any officers, agents, clerks, depositors, etc.; willful false swearing deemed perjury; ascertain whether bank transacts business as prescribed; make annual reports to State treasurer, to be published with treasurer's report, giving capital, debts, liabilities, means, resources, and amount of lawful money held, etc.; and amount paid to creditors of any bank closed up.

Stockholders individually liable, equally and ratably, and not one for another, for the benefit of depositors to the amount of par value of stock in addition to said stock (except persons holding stock as executors, administrators, guardians or trustees, or as collateral security, who shall not be personally liable, but trust and estate assets and funds shall be liable), persons pledging stock liable. Such liability may be enforced in suit at law or in equity by any bank in liquidation, or by any receiver, or other officer succeeding to the rights of such bank. All transfers of notes, securities or other property, and payments of money after acts of insolvency, or in contemplation thereof, with a view to prevent application of assets, as prescribed, or to prefer one creditor over another, shall be null and void.

Legal Process to be served on the president, cashier, or treasurer, in the county where bank is located, or where plaintiff resides, or by leaving attested copy of process at banking-house, during banking hours, with teller, clerk, or any officer of the bank.

Total Liabilities of any bank, person, firm (including liabilities of the members of such firm), or corporation for money loaned by bank shall at no time exceed one-tenth part of the capital and surplus of such bank, discount of bills of exchange and commercial paper by actual owner not considered; these provisions not to apply to real estate loans, or other authorized collateral securities. By two-thirds vote of the directors it may be increased to one-fifth. *Liquidation*, may go into liquidation and be closed by vote of two-thirds of capital; refusing to pay deposits or becoming insolvent, to be wound up.

Legislature at any regular session may alter or amend laws by two-thirds vote. Not necessary to submit such amendments to popular vote.

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holder the county treasurer shall call upon the cashier and demand payment, and it shall be his duty to pay tax and charge amount paid against the shares. The cashier of every bank on second Monday of April in each year, file with county clerk, list of stockholders, amount of their stock, and their residences.

Bills of Lading governed by the common law.

Collaterals. Common law governs. Stocks, bonds, or other personals may be sold to satisfy debt or obligation upon any default in payment or performance, at public sale (or at private sale where authorized by the contract), upon ten days' written notice served before sale on pledger or his personal representative, personally or by mail addressed to his last place of residence. If at public sale, between nine o'clock a. m. and sunset, at a public place in township, village, or city where collateral is held, by person holding same, and notice given by posting written or printed notice in three public places ten days before date of sale. Pledgee, his assigns or legal representatives, may purchase at such sale.

Commission Men and Brokers who shall receive for sale or offer for sale for another for hire, or cause the same to be done, any grain, fruits, vegetables, live stock, meats, or poultry, and all other kinds of farm or dairy produce, shall execute a bond of $5,000 to people of State, approved by judge of probate, with two or more sureties, conditioned for faithful performance of the trust reposed in him, and to pay over all moneys coming into his hands to the proper parties, filed with county clerk. Party aggrieved may bring in action on the bond. Commission men must obtain certificate from county clerk, or secretary of State in case of non-residents, reciting facts of bond and sureties, such bond to be renewed on or before January 1 of each year; non-compliance a misdemeanor, punishable by fine or imprisonment.

Contracts and Sales. (*See Interest; Statute of Frauds; Married Women; Husband and Wife; Notes and Bills.*) Executors and administrators may enforce contracts for sale of lands of deceased, and may execute and deliver deeds of the contracted premises.

All deeds of gift, all conveyances, and all transfers or documents, verbal or written, of good chattels or things in action, made in trust for the use of the person making same, shall be void as against the creditors existing or subsequent of such person. Following contracts shall be void unless in writing and signed by the party to be charged therewith or by some person by him authorized: Every agreement not to be performed in one year; every special promise to answer for the debt, etc., of another; every agreement made upon consideration of marriage, except promises to marry; every special promise of administrator or executor to answer damages out of his own estate; contracts of sales of goods, wares, and merchandise for the price of fifty dollars or more, unless purchaser shall receive and accept part of the goods sold, or pay something in earnest to bind the bargain or in part payment. Auction sales where auctioneer enters sales in sale book, etc., shall be sufficient. Consideration of contract need not be expressed in the writing, but may be proved by any legal evidence.

Every sale made of goods and chattels in possession and every mortgage thereof, or upon any condition whatever, unless accompanied by an immediate delivery and followed by an actual and continued change of possession, shall be presumed to be fraudulent as against the creditors of the vendor, except chattel mortgages, etc., filed pursuant to law. Misrepresentation in connection with the sale of merchandise a misdemeanor; may be punished by fine.

Corporations. Banks, mining and manufacturing, insurance—fire, marine and life—printing and publishing, mercantile, railroad, street railways, co-operative mutual benefit associations, co-operative and savings associations, religious societies, and municipal corporations, may be organized under general laws existing for the purpose. All corporations must pay a franchise fee to secretary of State. Unlawful for two or more of them to make or enter into any contracts of any kind not to sell, dispose of, or transport any article or commodity of trade use, merchandise, commerce, or consumption below a common standard figure or fixed value, or to keep the price, etc., at a fixed or graduated figure, or by which they shall establish the price between them, or themselves, or others, so as to directly or indirectly preclude a free competition. Violation of this law, attorney-general or prosecuting attorney of any county to bring suit or quo warranto. Foreign corporations in this State, violating, denied the right and prohibited from doing business in this State; duty of attorney-general to enforce the law; secretary of State to revoke certificate authorizing such corporation to do business. Violation declared a conspiracy against trade, punished by fine and imprisonment. Stock in private corporations may be transferred by owner's assignment of the certificates of shares in writing with power of attorney to assignee or other person authorizing transfer on the transfer books of the corporation. Manufacturing, mining, and mercantile corporations have a lien on the shares for any indebtedness of the stockholder to the corporation.

Courts. *Terms and Jurisdiction.* Circuit courts, holding from two to four terms a year in each county, have original jurisdiction in actions on contract where damages claimed amount to $100 and upward, and exclusive jurisdiction in actions of tort where damages alleged exceed $100, and in actions on contracts where damages alleged exceed $500; and have appellate jurisdiction from justice's and probate courts; and have as circuit courts in chancery equity jurisdiction co-extensive with court of chancery in England; and such courts have certain chancery jurisdiction of causes prescribed by statute. The superior court of Grand Rapids has original and concurrent jurisdiction with the circuit court in all civil actions where the debt or damages exceed $100, and in which the defendants, or one of them, shall have been served with process in the said city, and where the parties or one of them, reside in said city, which must appear in the process or pleadings. Justice's courts have original jurisdiction when the debt does not exceed $100, and concurrent jurisdiction with the circuit court when the debt does not exceed $500, except in actions of tort, where the limit is $100. There is a probate court in each county, with the usual probate powers, and jurisdiction of testamentary trusts and to appoint trustees of such; also statutory powers in establishing drains. The supreme court of this State is the final appellate tribunal to which all appeals from the circuit and superior courts of the State are taken at law and in equity. United States courts, "sixth circuit" and eastern and western district, Detroit, Bay City, Port Huron, Marquette, and Grand Rapids, Mich.

Deeds, Mortgages, and Contracts for sale of real estate or of any interest in lands other than leases for a term not exceeding one year or of any trust or power over lands must be in writing and, if properly executed and acknowledged by grantor and subscribed by two witnesses, may be recorded within the county wherein the land is situate, and if not so recorded are void as against subsequent purchasers or incumbrancers for a valuable consideration who have not received actual notice of such deed or mortgage. But the consideration of any contract need not be stated in the writing. Conveyances of any interest in and every charge upon lands or the rents and profits thereof made with intent to defraud prior or subsequent creditors of the grantor shall be void. Foreclosure of mortgages: by advertisement, or in court of chancery in county where property is situated; redemption, one year from date of sale by advertisement, six months from sale by decree in chancery. Certificate of city and county treasurer or auditor-general required by register of deed, showing payment of city, state and county taxes for five years; in default thereof deeds and contracts not to be recorded. Leases for longer term than one year must be in writing. *Chattel mortgages and bills of sale intended as security* are absolutely void as against creditors or subsequent purchasers and mortgagees in good faith, without actual notice thereof, unless the mortgage or bill of sale, or a true copy thereof, be filed in the city or township clerk's office where the mortgagor resides, except where such mortgagor is non-resident of the State the instrument should be filed in city or town clerk's office where the property is located. Such mortgages made and withheld from the files are postponed to all indebtedness contracted after their date, and prior to date of filing such mortgages. Warehouseman's storage charges are paramount liens. Chattel mortgages are held to be securities for the debt—give no legal title until foreclosed by sale of the property, under power of sale, or by proceedings in equity; and such mortgages cease to be valid against judgment creditors, purchasers, and lienors without actual notice after one year unless within thirty days before the expiration of that time they are renewed by affidavit, showing the actual amount of mortgage debt; and the filing of this affidavit in such clerk's office. The fraudulent removal, disposition, concealment and appropriation of mortgaged chattels constitutes a criminal offense, felony, or misdemeanor, according to the value of property so disposed of; a felony to embezzle, remove, conceal, or dispose of leased chattels, or chattels held under contract of purchase, if their value amounts to $25 or more; if under $25 in value it is a misdemeanor.

Depositions may be taken conditionally to be read on the trial of any action pending in courts of record; application therefor may be made to any judge or circuit court commissioner; affidavit showing nature of the action, etc., and that the witness is about to depart out of the State or is sick or infirm, the judge makes the order requiring adverse party to appear and attend examination before said judge at the time and place specified in the order, not to exceed twenty days; the judge may compel attendance of such witness by summons and enforce same by attachment; deposition to be returned to the clerk of the court where action is pending. Commission may issue to one or more competent persons to take deposition where witness resides out of the State on application to and order of the court or circuit court commissioner upon interrogatories to be annexed thereto, which must be first settled before a justice or judge or circuit court commissioner, unless agreed upon by parties or their attorneys; deposition to be taken and certified and returned with the commission as directed by the terms thereof. Depositions may be taken before any judge or commissioner upon notice given to adverse party where the witness resides more than thirty miles from the place of trial, either in or out of the State; affidavit to show the fact of the cause pending in any court of record or justice's court, and that the witness is material and lives more than thirty miles from the place of trial. Any judge of probate may issue commission to one or more persons to take depositions for use on the trial of any cause or proceeding before probate court where such witness is unable to attend by reason of age or bodily infirmity, or lives more than twenty miles from the place of trial; also when subscribing witness to a will filed for probate resides in the State, but out of the county, and is unable to attend, court may order deposition to be taken before judge of probate in county where witness resides.

Descent and Distribution of Property is provided by statute. *Unmarried man or woman, real estate* descends to father and mother in equal shares; if but *one* parent, to survivor alone; if *no* parent, equal shares to brothers and sisters, or their children, by right of representation; if no parent, brother or sister or their children, to next of kin in equal degree. Personal estate distributed in like manner as their real estate. *Widower*, who dies without children or issue of them, real estate same as above; leaving one child, it takes entire real estate; if more than one, equal shares; if any children of deceased child, equal shares by right of representation; if no child, to all his other lineal descendents; who, if in same degree of kindred, that is, if all grandchildren, share equally, otherwise according to representation. Personal estate in like manner as real estate. *Married man* leaving no issue, one-half real estate goes to widow, remainder to father and mother in equal shares, or if only one parent, one-half to such parent; leaving no parent, one-half goes to widow, other half to brothers and sisters and children of any of them deceased by right of representation; leaving no parent or brothers or sisters or children, entire estate descends to widow. Personal estate, not exceeding $3,000, all goes to widow; if exceeding that amount, she takes one-half of the excess, the other half to father and mother equally, or to survivor living; if both dead, to brothers and sisters, and the issue of deceased's brothers and sisters by representation, share and share alike; if neither parent, brother, sister, nor issue of such brothers or sisters, all goes to widow. Married woman, no children, real estate, husband taking same interest in wife's real estate which the wife takes in the husband's in like case, and personal property, one-half goes to husband, other half to father, if living; if not living, to mother, brothers and sisters, and issue of such if any deceased, by representation, share and share alike; neither father, mother, brother, sister nor such issue, all to husband. Married man, one child and no issue of any deceased child, living, real estate to the child subject to the widow's dower interest, one-third of real estate for life. Personal estate one-third to the widow, two-thirds to child or to the issue of such child if deceased, by representation. Married woman, one child and no issue of any deceased child, real estate to the child, husband nothing, and personal property, one-half to husband, one-half to the child or the issue of any deceased child by representation; if no child, one-half to parents or survivor, or if both dead, to brothers and sisters or their children representative; if none living, the whole to husband. Married man leaving two or more children, or issue of deceased children, real estate goes in equal shares to them, subject only to the wife's dower; children of a deceased child, take in equal shares, by representation. If no child living, to all other living descendants; if only grand-children, share and share alike, otherwise according to right of representation. Personal property one-third to widow absolutely; remainder to children or issue of a deceased child by representation. Married women leaving two or more children, or issue of such children deceased, real estate to them and the issue of such deceased children, by representation. Personal property one third to the husband, remaining two-thirds to the children, or the issue of any deceased child or children. Any person leaving several children or one child, and the issue of one or more deceased children, and either of such surviving children dies under age, not having been lawfully married, *real estate* that came to the deceased's child by inheritance from such deceased parent, descends in equal shares to the other children of same parent, and to the issue of any other children who shall have died, by right of representation. Death of such a child, under age, unmarried, all the other children of such parent being dead, and any

of them shall have left issue, the real estate that came to such child by inheritance from such parent, descends to the issue of other children of the same parent; if all of the same degree of kindred to said child, they share the estate equally, otherwise by representation. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance, being real estate, comes to the intestate by descent, devise or gift of some one of his ancestors; in which case all those who are not of the blood of such ancestors are excluded from such inheritance. Real estate as above used means in fee or for life of another. Does not include lesser estates. Estate of deceased, an adopted person, descends to the persons, and in same manner, as though such person was a natural child.

Divorce. Courts in chancery have exclusive jurisdiction. Granted in the following cases: 1. From bonds of matrimony: For adultery, for incompetency at the time of marriage; for imprisonment in any prison for three years or more without pardon; for desertion of two years; for habitual drunkenness, absolute divorce in another State. 2. From bed and board forever, or for a limited time: For extreme cruelty; desertion for two years; want of suitable maintenance for wife where husband has sufficient ability, may decree, divorce from bond of matrimony. Complainant should reside in the State one year immediately preceding filing petition or bill, or if marriage occurred in this State, complainant shall have resided here from that time until the time of bringing suit; or if the marriage occurred in this State and complainant has resided here from that time. Defendant must be domiciled in this State at the time bill or petition is filed; when defendant shall have been domiciled here when the alleged cause of divorce occurred; when the cause for divorce arose out of the State residence here for two years of complainant or defendant. When not domiciled here at time of suit or when cause for divorce arose, complainant must prove actual cohabitation together within this State, or that such complainant has resided in the State for two years. Where cause arose out of State, one or both parties must reside here two years preceding the suit, no testimony to be taken in the suit for two months except the cause of desertion, or conditionally, to perpetuate the testimony. There must be no collusion between the parties to procure the divorce. Complainant must not be guilty of crime or misconduct charged against respondent. Where children, the prosecuting attorney must be served with the process. Court direct care and custody of minor children and maintenance during the suit, and on final decree direct their custody and maintenance, and may afterwards, on petition of either parent, revise and alter such decree concerning their care, etc. Alimony to wife out of his estate, in gross or otherwise, as the ability of the husband and the circumstances of the case warrant. In divorce from bonds of matrimony, except for adultery committed by the wife, if the estate awarded to the wife shall be insufficient for the support of herself and the children, may require sufficient security to be given by the husband for the payment thereof according to the terms of the decree. Marriages prohibited by law are absolutely void without any decree; but the issue of such marriage, except such as occurred where the parties had a former husband or wife living, deemed legitimate. Imprisonment for life, marriage thereby absolutely dissolved without decree, no pardon granted, shall restore his or her conjugal rights. Marriage, one or both of the parties under legal age, is voidable, not void, annulled or cancelled by mutual consent of both or at the election of the party under age; but not of the party of competent age; for upon the latter it is binding. But will be void if the party under age withdraws and refuses to cohabit. The fact that a divorce in another State is fraudulent may be shown collaterally in this State. (People v. Dawell, 25 Mich. 247.) Marriage dissolved on account of prior marriage of either party, if the marriage was in good faith, and such party believed the former wife or husband was dead, that fact appearing in the decree of divorce, the issue of the second marriage, before the commencement of suit, legitimate. Suit for incapacity of one of the parties must be brought within two years from the marriage. Divorce for adultery will be denied when offense was committed by procurement or connivance of complainant; when the offense was forgiven by injured party, and established by express proof, or by the voluntary cohabitation, with the knowledge of the offense; and when suit shall not have been brought within five years after discovery. Divorce from bed and board may be revoked at any time by the court upon the application of the parties.

Dower. Wife residing in this State entitled to one-third interest in the lands possessed by the husband at his death, or where the marriage is dissolved by husband being sent to imprisonment for life, or for adultery committed by him, or for his misconduct or habitual drunkenness, or for his imprisonment for three years or more. May be assigned by courts of chancery or by probate courts having jurisdiction of estate of deceased husband. Must exercise option to take dower in lieu of her rights under will or under the statute of distribution within one year after administration is granted. Married women residing in this State, aged eighteen years and upwards, may bar right of dower in any estate conveyed or mortgaged by her husband by joining in the deed or mortgage, and do any other act concerning her rights in her husband's lands as if of full age.

Execution may issue at once in circuit courts, and within five days from rendition of judgment in justice's courts. Executions are returnable not less than twenty days nor more than ninety days. Stay in justice's courts may be obtained by giving secured bond for payment of judgment, costs and interest, the time allowed being four months when the judgment does not exceed $50, and six months when above that sum. Lands sold under execution may be redeemed by the debtor, his heirs, devisees, representatives or assigns, within one year, by payment of the purchase money with interest borne by the judgment, and may be redeemed by any judgment creditor having subsequent levy at any time within fifteen months from the date of such sale. Executions may issue at any time during the life of a judgment. Levy on real estate ceases to be any lien thereon at the expiration of five years.

Exemption. Homestead of any householder not exceeding forty acres, if in the country, or a house and lot in a city, town or village, the value in either case not to exceed $1,500. Can not be alienated or incumbered without consent of the wife, where such relation exists, and can not be sold by probate license to pay debts, unless appraised to exceed $1,500, and that amount is paid. Personalty exempt includes household furniture to amount of $250, all sewing-machines actually in use by individual or family, and any mortgage, etc., thereon must be signed by the wife; stock in trade, a team, or other things which may be necessary to carry on the pursuit or particular business, up to $250, and partners of a firm are each entitled to such exemption, except for the purchase money thereof, and any sale of same after suit for the price shall be void, provided notice is filed in clerk's office in the town where owner resides; library and school books not exceeding $150; to a householder, ten sheep, two cows, five swine, provisions, fuel. Spinning wheels, looms, stoves put up for use in dwelling, cemetery tombs and rights of burial, while in use for the dead, library and school books of every individual and family, family pictures, one cow, provisions and fuel for comfortable subsistence for one month, household goods, furniture and utensils to the value of $500, shall be exempt from levy and sale under any execution issued upon judgment for work and labor other than professional services, etc. No property exempt from sale for taxes, except such as is exempt by tax laws.

Holidays to be observed in the acceptance and payment of bills of exchange and promissory notes, and the holding of courts, etc., are the following: 1st day of January (New Year's Day), 22d of February (Washington's Birthday), 4th of July, 25th of December (Christmas Day), 30th of May (Decoration Day), first Monday of September; every Saturday afternoon; and any day appointed by the governor or the president of the United States as a day of thanksgiving, or a day of fasting and prayer. In case any of said holidays shall fall on Sunday, then the Monday following shall be considered as the said holiday. When the last day of grace falls on Sunday, or on any legal holiday or half holiday the next secular or business day is considered as the last day of grace.

Husband and Wife. All real and personal estate acquired by a female before her marriage or after her marriage shall be and continue hers to the same extent as before marriage; not liable for her husband's debts; she may dispose of it without his consent; liable on her contracts in relation to her sole property the same as if she were unmarried. Husband not liable upon any contract made by the wife in relation to her sole property. May testify against each other in prosecutions for bigamy but not as to communications made by one to the other during marriage. (*See Married Women.*)

Interest. Five per cent per annum is the legal rate of interest, but parties may contract in writing for a higher rate, not exceeding 7 per cent. Interest payable semi-annually, annually, or at any other period falling due, will bear interest computed to date of payment. The penalty for usury is a forfeiture of all interest on the obligation. A bona fide purchaser of negotiable paper is not affected by its being usurious, unless appearing on the paper. Judgments bear the same rate of interest as the instrument or contract upon which such judgment was founded.

Judgments are not liens on lands until execution has been issued thereon and a levy made, and notice thereof recorded in the register of deeds' office of the county where such lands are located—executions issue to sheriff of any county in the State. Judgments for claims arising out of death or personal injury of any person from the negligence of any street railway or steam railroad company organized and doing business under the laws of this State, constitute a lien upon all the assets and all the property of such corporation over all other judgments, executions, or attachments, except for personal labor. Levies on real estate valid for five years from date of levy. Judgments can be obtained in the circuit court in from forty-five to sixty days, depending on return day, time of service, term of court, etc. In justice's courts, if defendant makes default, judgment can be obtained on return day of process. Certified judgments and decrees affecting lands may be recorded in the register of deeds' office in any county where the lands are situated. The records and judicial proceedings of any court in the several States and Territories and in any foreign country, authenticated by the clerk of such court with the seal of such court annexed, or of the officer in whose custody such records are legally kept, with the seal of his office, shall be admitted in evidence in the courts of this State.

Liens. Hotel keepers', inns', boarding houses', lodging houses', on baggage and effects of guests, boarders, lodgers. Laborers', against estate of insolvents and foreclosure of mortgages, trusts, deeds, and other liens, enforced by suit in equity. Mechanics', material-men's, etc., on buildings, by statute, against owner, contractor, and sub-contractor.

Limitations of Suits. Judgments of courts of record, foreign and domestic, exist ten years; of justice's courts, six years. On accounts and notes and other simple contracts actions can not be brought unless within six years from the time the action accrued, as also all civil actions for injuries to person or property. On sealed instruments and judgments, ten years. Revivor: Part payment, or promise in writing to pay. Absences from the State deducted from the period of limitation. Writs of error from supreme court must be issued in one year after final judgment of court below, except said supreme court may grant further time, not to exceed six months. Questions of law only can be reviewed in law cases (now exceptions to refusal of new trial), but both questions of fact and law will be heard on appeals in equity cases. Proceedings to foreclose mortgages must be commenced within fifteen years after they become due and payable, or within fifteen years after last payment on mortgage; and as to mortgages fifteen years or more past due, within five years after the statute takes effect. [See Session Laws, 1879.] After such limitations have expired, mortgages may be discharged by application to the circuit court of the county where property is situated. For the recovery of real property—within five years where the claim arises against executor's, guardian's, or sheriff's deed; within five years where defendant claims under deed made by auditor general of this State for taxes; within fifteen years in all other cases. Within three years, actions for personal injuries. Within five years, actions for estates sold by trustees, and by minors and others under legal disabilities, and persons absent from the State; within three years after removal of disabilities or return to State.

Mob Violence. Any person taken from officers of justice in any county by a mob and assaulted shall be entitled to recover from the county $1,000. Any person suffering lynching by a mob is entitled to recover $5,000, and if serious injury, $1,000; if permanently disabled, $5,000; suffering death, $5,000.

Married Women may make contracts in respect to their own property, and may have, hold, and enjoy the same, and have the same rights and remedies as though they were unmarried. They may carry on business in their own name with their own property by consent of their husbands, but can not enter into partnership with husband and render herself jointly liable for firm contracts (73 Mich. 146). But a married woman's contract to pay or to become liable for payment of the debt of her husband or other person is voidable by her. She may, however, charge her real or personal property to secure such indebtedness, by mortgage. A mortgage upon a homestead is void unless signed by the wife. Widow takes dower; the use during her natural life of one-third part of all the lands whereof her husband was seized of an estate of inheritance at any time during coverture, except non-residents of the State and except where she elects to take by will or under the statute of distribution, giving her property in lieu of dower. Mortgage indebtedness on the real estate for part of purchase price will be deducted from the value of such real estate in setting off and assigning dower. Conveyances to husband and wife of lands they have title to by entirety not liable to execution against both or either of them. Mechanic's lien for services and materials furnished upon lands belonging to, with her knowledge and consent, by contract with her husband, same as if contract made with her. Act No. 179, Pub. Acts, 1891.

Notes and Bills of Exchange. Negotiable promissory notes and bills of exchange, including acceptances, are "commercial paper." Not

necessary that such paper be made payable at any bank or other place. The persons primarily liable to pay any such paper must seek the holder if no place of payment specified, and pay to such holder when the paper is due. If there are indorsers or drawers entitled to notice, of course the holder is bound to present the paper to the makers at the place specified if any, otherwise diligently search for them and demand payment, if he wishes to hold such indorsers and drawers to their liability, and notice must be given them in their order promptly by due course of mail or by immediate personal service of notice of such presentment, demand for payment, and refusal to pay the paper. On all bills of exchange and negotiable notes and acceptances payable within this State, three days of grace are allowed, unless expressed "without grace;" any bill of exchange, note or draft payable on demand, and all checks, bills of exchange or drafts drawn on any bank, are payable without grace, and it is not necessary to protest such bill and drafts so drawn for non-acceptance; but such bills of exchange and checks should be presented within a reasonable time for payments to hold drawers or indorsers. In all other cases demand, protest for non-payment, and the sending notices of protest to the indorser, at his reputed place of business or residence, are necessary to bind the indorser. Parties other than payees to paper, being such before or at its inception, are held as joint makers, and not entitled to notice of non-payment. Damages on domestic bills protested, three to ten per cent. No person within this State shall be charged as an "acceptor" on a bill of exchange unless his acceptance shall be in writing signed by himself or his lawful agent. Guaranty of payment or of collection of any promissory note is negotiable and shall pass to the holder of the note whether such guaranty is endorsed thereon or is written or printed upon separate paper.

Powers of Attorney relative to real estate must be executed and acknowledged in the same manner as deeds to authorize record in registry of deeds.

Replevin. Writs of replevin may be issued to recover possession of personal property or damages for its unlawful taking or detention upon filing an affidavit in justices' or circuit courts showing that the plaintiff in the writ is entitled to possession of the property, and that the same has not been taken by virtue of any warrant for any taxes, assessments, or fine under any statute of this State, nor seized under any execution or attachment against the goods and chattels of the plaintiff liable to execution; and that such goods and chattels are unlawfully detained by defendant. The plaintiff in justices' courts must file a bond before writ issues with sufficient sureties; and in circuit court within twenty-four hours after the replevy, give bond to sheriff, otherwise the goods will be restored to the defendant, pending such suit. Judgment for return of the property or for its value, if return is waived, to be assessed by the court or jury. Where property is valued at $100 or under, justices' courts have jurisdiction.

Suits. Practice and proceedings of circuit and supreme courts of record are in accordance with the common law and courts of equity in England, with some statutory modifications. Actions survive as by the common law, and in addition thereto actions of replevin, trover, assault and battery, false imprisonment; for goods taken and carried away; negligent injuries to the person; actions for damages to real or personal estate; actions to recover real estate parted with by reason of false representations and deceit. In actions where defendant has given notice of set-off or recoupment, plaintiff shall not be allowed to discontinue his suit or submit to nonsuit without consent of defendant.

Taxes assessed against real estate become a debt against the persons assessed December 1st of each year, and such taxes a lien on the real estate, and all personal taxes shall be a lien on all personal property from first day of December of same year. City taxes are governed by charter.

Wills to include codicils may be made in writing by any person of full age and sound mind disposing of testator's property, real or personal; must be signed by the testator, or by some person in his presence, and by his express direction, and subscribed in his presence by two or more competent witnesses. Can not be revoked unless by burning or obliterating it with the intention of revoking it by the testator or by some person in his presence and by his direction, or by some other will or codicil in writing, or by some other writing signed and subscribed in the same manner. Wills must be presented to the probate court within thirty days after testator's death; when the judge shall appoint time and place for proving, and cause public notice thereof by publication in a newspaper printed in the State three weeks successively prior to the time of hearing. Court will grant probate thereof on the testimony of one of the subscribing witnesses, that such will was executed in all the particulars as required by law, and that the testator was of sound mind at the time of the execution thereof. Wills proved in any other of the United States or in any foreign country, according to the laws thereof may be allowed, in the State or county in which the testator shall have real or personal estate copy of such will and the probate thereof, duly authenticated, produced by the executor or other person interested to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will; if it shall appear that the instrument ought to be allowed in this State, the copy shall be recorded, and the will shall have the same force and effect, as if it had been the original will; the probate court shall grant letters testamentary, or letters of administration, with the will annexed, which shall extend to all of the estate of the testator in this State; and such estate, after the payment of his debts and expenses of administration, shall be disposed of according to such will, so far as it may operate upon it; and the residue shall be disposed of as is provided by law of this State. When any child shall be born after making of a last will, and no provision made therein for such child, it shall have the same share in the estate of the testator as if he had died intestate, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate. A devise or legacy to any child or relation of testator shall go to the issue of the legatee or devisee, who shall die before the testator leaving issue, in the same manner as the devisee or legatee would have taken the same if he had survived the testator; unless a different disposition shall be directed by the will. All the property of the testator shall be first liable for the payment of his debts, unless he designated sufficient of his estate for that purpose, when such provision shall be first exhausted. If the testator leaves a wife surviving him, the testamentary disposition shall be subject to her election to take any interest that may be given to her, by the testator in his last will and testament; or in lieu thereof, to take the sum or share that would have passed to her, under the statute of distributions, had the testator died intestate, until the sum shall amount to five thousand dollars; and of the residue of the estate one-half the sum or share that would have passed to her, under the statute of distributions, had the testator died intestate, and in case no provision be made in said will, she shall be entitled to the election. The election to take otherwise than under the will, must be made in writing, filed in the court where the estate is being settled within one year from the probate of the will; failure to so file, shall be deemed an election to take under the will. The will executed in a foreign country, by the law of which no probate of wills is required, if the original will can not be produced in this State for probate, it may be proved and allowed in this State by copy in the circuit court in chancery in and for any county, in which the maker of such will left any property, at his or her decease affected by such will, and such court may admit such will to probate; the same in effect as if in any probate court of this State.

SYNOPSIS OF THE LAWS OF MINNESOTA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. WARNER, RICHARDSON & LAWRENCE, Attorneys at Law, St. Paul. (*See Card in Attorneys' List.*)

Acknowledgments. Deeds and mortgages must be signed, sealed, and acknowledged by the grantor, and attested by two witnesses. Within the State acknowledgments may be made before any judge or clerk of a court of record, justice of the peace, notary public, register of deeds, court commissioner, county auditor or member of the legislature. Without the State, but within the United States, by judges or clerks of courts of record, justices of the peace (whose certificate must be authenticated with certificate of clerk of court), and notaries public, also by commissioners in any of the States or Territories of the United States, duly appointed and commissioned by the governor of this State. In foreign countries before any notary public, minister, consul, or other diplomatic or commercial agent of the United States there accredited and resident. When a married woman unites with her husband in the execution of an instrument she must be described in the acknowledgment as such.

Actions. The distinction between actions at law and suits in equity and the forms of all such actions are abolished; and there is but one form of action, which is called a civil action. The party complaining is known as the plaintiff; the adverse party as the defendant. Every action shall be prosecuted in the name of the real party in interest, except in certain cases where parties are infants or under guardianship, and except also that an executor or administrator, trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. When the question is one of common or general interest to many persons, or when the parties are very numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole. In case of an assignment of a thing in action—except a promissory note or bill of exchange transferred in good faith and upon good consideration before due, the action by the assignee is without prejudice to any set-off or other defense existing at the time of, or before notice of, the assignment. When two or more persons transact any business under common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the process in such cases being served on one or more of the associates. The judgment in such action shall bind the joint property of all the associates in the same manner as if all had been named defendants. An action does not abate by death, marriage, disability, or transfer of any interest if the cause of action survives or continues. In case of death, marriage, or other disability the court may on motion allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest the action shall be continued in the name of the original party or the court may allow the person to whom the transfer is made to be added or substituted in the action. After a verdict of a jury, decision or finding of a court, or report of a referee in any action for a wrong, such action shall not abate by the death of any party. The plaintiff may unite several causes of action in the same complaint, whether legal or equitable when they are included in either of the following classes: 1. The same transaction, or transactions connected with the same subject of action. 2. Contracts, express or implied. 3. Injuries with or without force to person and property, or either. 4. Injuries to character. 5. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same. 6. Claims to recover personal property, with or without damages for the withholding thereof. 7. Claims against a trustee by virtue of a contract, or by operation of law. But the causes of action so united shall belong to one only of these classes and affect all the parties to the action and not require different places of trial and shall be separately stated.

Administration of Estates. There is established in each county a probate court, presided over by the probate judge of the county. Wills must be proved and letters testamentary, or of administration granted: 1. In the county in which the decedent was a resident at the time of his death. 2. In the county in which the decedent may have died leaving estate therein, he not being a resident of the State. 3. In the county in which any part of the estate may be at the time of his death, or shall thereafter come, the decedent having died out of the State and not resident thereof at the time of his death. 4. In the county in which any part of the estate may be, the decedent not being a resident of the State and not leaving estate in the county in which he died. 5. When the estate of the decedent is in more than one county, he having died out of the State, and not having been a resident thereof at the time of his death, or being such non-resident, and dying within the State, and not leaving estate in the county where he died, the probate court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate. Administration will be granted in the following order: 1. The widow or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed if suitable and competent to discharge the trust. 2. If the widow or next of kin, or the person selected by them, is unsuitable or incompetent, or if the widow or next of kin neglects for thirty days after the death of the intestate to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it. A petition for letters of administration must be verified and must show: 1. The jurisdictional facts. 2. The names, ages, and residence of the heirs of the intestate, so far as known to the petitioner. 3. The probable value of the personal property of the estate, and also the probable value of the real property and its character. 4. The name and address of the person for whom administration is prayed. At the time of granting letters testamentary, or of administration, the court shall make an order limiting the time in which creditors may present claims against the

deceased for examination and allowance, which shall not be less than six months, nor more than one year from the date of such order (it is usual to make the term six months in the first instance). Said order shall fix the time and place in which the court will examine and adjust the claims and demands of all persons against the deceased. No claim or demand shall be received after expiration of the time so limited unless for good cause shown, and in no case unless presented within one year and six months from the time when notice of the order was given.

Aliens. *(See Right to Hold Property.)*

Arbitration. All controversies which can be subject of a civil action may be submitted to the decision of one or more arbitrators. Neither party has power to revoke a submission without the consent of the other, and if either of them neglects to appear before the arbitrator after due notice, the arbitrators may nevertheless proceed to hear and determine the cause upon the evidence produced by the other party. Arbitration under the statute is rarely resorted to.

Arrest. There is no arrest for debt in this State.

Assignments. (Superseded by U. S. Bankruptcy Act.)

Attachments may issue where (1) debt was fraudulently contracted; (2) defendant foreign corporation or non-resident, or has departed from State with intent to defraud or delay his creditors, or avoid service of summons, or keeps himself concealed with like intent; (3) or has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of his property with intent to delay or defraud his creditors.

Banks. Any number of persons, not less than three, may be incorporated as a bank, the capital stock to be not less than $10,000, in towns of not exceeding 1,000 population; $15,000 in towns of more than 1,000 and not exceeding 1,500 population; $20,000 in towns of more than 1,500 and not exceeding 2,000 population; and $25,000 in towns of more than 2,000 population. The full amount of capital stock named in the organization certificate shall be paid in cash before any association shall be authorized to commence business. The stockholders in each bank shall be individually liable to an additional amount equal to the amount of stock owned by them for all debts of such bank, and such individual liability shall continue for one year after any transfer or sale of stock.

The affairs of each bank shall be managed by a board of not less than three directors. Every director must own and hold not less than $500 of the capital stock of such bank, except that in banks having a capital of of $15,000 or less, a director must own and hold in his own name not less than $300 of the capital stock of such bank.

Before any dividend is declared not less than one-fifth of the net profits of the bank for the preceding half-year, or for such period as is covered by the dividend, shall be carried to a fund, to be designated the surplus fund, until such surplus fund shall amount to 20 per cent of its capital stock, and thereafter such surplus fund shall equal 20 per cent of the capital stock of such bank, and whenever the same becomes impaired it shall be reimbursed in the manner provided for its accumulation. The board of directors of each bank shall annually appoint from its members an examining committee, whose duties it shall be to examine the condition of the bank at least once every six months, or oftener if required; and such committee shall report to the board, giving in detail all items included in the assets of the bank which they have reason to believe are not of the value at which they appear on the books and records of the bank, and giving the value of each of such items as in their judgment they may have determined; and the board shall cause said report to be recorded in the minute books of the bank, and a duly authenticated copy thereof transmitted to the public examiner.

Every bank shall make to the superintendent of banks not less than four reports during the year, which shall be published. The superintendent of banks shall also have power to call for special reports from any particular bank, whenever, in his judgment, the same are necessary.

The total liabilities to any such bank of any person, or of any company, corporation, or firm, for money borrowed, including in the liabilities of a company, or firm, the liabilities of the several members thereof, shall at no time exceed 15 per cent of the aggregate amount of the capital stock of such bank actually paid in, and of the permanent surplus fund of such bank; provided, that the total liability of any officer or director to such bank shall at no time exceed 10 per cent of the aggregate amount of the capital stock of such bank actually paid in and of the permanent surplus fund of such bank. But the discount of the following classes of paper shall not be considered as money borrowed: 1. The discount of business or commercial paper actually owned by the person negotiating the same. 2. The discount of bills of exchange drawn in good faith against actually existing values. 3. The discount of paper based upon the collateral security of warehouse receipts covering agricultural and manufactured products in store and elevators and warehouses under the following conditions: 1. That the actual market value of the property held in store and covered by such receipts shall at all times exceed, by at least 10 per cent, the amount loaned upon the same. 2. That the full amount of the loans shall at all times be covered by policies of fire insurance.

Each bank shall, at all times, have on hand, in available funds, an amount equal at least to 20 per cent of all its immediate liabilities. One-half of this amount of available funds may consist of balances due to the bank from good solvent banks, and one-half of such sum shall be held in reserve in cash on hand.

On becoming satisfied that any bank has become insolvent, or has violated any of the provisions of the banking law, the superintendent of banks may forthwith take possession of the books, records and assets of every description of such bank, and hold the same, and said books, records and assets shall not be subject to levy or attachment during such reasonable time as may be necessary for further examination and to enable the superintendent to apply to a court of competent jurisdiction for the appointment of a receiver for such bank.

No banking corporation shall make an assignment, but its officers shall report the fact of insolvency to superintendent of banks, who shall take possession and apply for receiver.

Bills of Lading. Bills of lading and warehouse receipts are declared by statute to be negotiable, and may be transferred by indorsement and delivery of such receipt or bill of lading, and any person to whom such receipt or bill of lading may be transferred shall be deemed to be the owner of the goods, wares or merchandise therein specified, so as to give security and validity to any lien created on the same, subject to the payment of freight and charges thereon, provided all warehouse receipts or bills of lading which shall have the words "not negotiable," plainly written or printed on the face thereof, shall be exempt from the provisions of said law.

Bonds, Recognizances, etc. Legally chartered companies authorized by the laws of any State to guarantee bonds or other obligations may be accepted as surety on any bond, recognizance, obligation, stipulation, or undertaking, and all heads of departments, courts, judges, boards, and municipalities, and any and all public officers, State, county, town, or municipal, whose duty it may be to accept or approve the sufficiency of any such bond, etc., may accept and approve the same when executed or guaranteed solely by such company, whether the law requires more than one surety or not. Such companies must, however, first procure the certificate of the commissioner of insurance of this State, authorizing it to do business therein.

Chattel Mortgages. Every mortgage on personal property which is not accompanied by an immediate delivery, and followed by an actual and continued change of possession, is void as against creditors and subsequent purchasers and mortgagees in good faith, unless the mortgage is made in good faith, and the mortgage or a true copy thereof is filed as follows: The mortgage shall be filed in the town, city, or village where the property mortgaged is at the time of the execution of the mortgage, and a copy filed in the town, city, or village where the mortgagor, if a resident of the State, resides. In each town the instrument shall be filed in the office of the town clerk thereof, and in the several cities and villages in the office of the recorder, clerk, or other officer in whose custody the records of the city or village are kept. Such instruments or copies shall remain on file and shall be duly acknowledged before an officer authorized to take acknowledgment of deeds. A chattel mortgage so filed is notice to creditors and subsequent purchasers until the debt is paid or barred by statute of limitations, but in no event more than six (6) years from date of filing. All chattel mortgages must be attested by two witnesses, and acknowledged. All mortgages of the following personal property, to-wit, the family bible, family pictures, school books or library, and musical instruments for the use of the family; all wearing apparel of the debtor and his family, all beds, bedsteads, and bedding kept and used by the debtor and his family, all stoves and appendages put up or kept for the use of the debtor and his family, all cooking utensils and all other household furniture not herein enumerated not exceeding $500 in value; also all moneys arising from insurance of any property exempted from sale on execution when such property has been destroyed by fire; one sewing machine and one typewriter, made by a married man or woman, must be executed by both husband and wife in order to be valid.

Commission Merchants. Every person, firm, or corporation who receives for sale for account of the shipper or consignor any grain, farm produce, agricultural products, or fruits shall first obtain a license from the railroad and warehouse commission to conduct and carry on such business, and give a bond to the State of Minnesota in a sum to be fixed by said commission for the benefit of such consignors, which bond, approved by said commission, shall be filed in the office of the secretary of State.

Conveyances. Deeds of land or any interest in lands within this State shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and be acknowledged by the person executing the same. In foreign countries it may be executed according to the laws of such country, with a certificate of any minister resident, charge d'affaires, or consul of the United States, to that effect indorsed thereon or attached thereto, or before any notary public, minister, charge d'affaires, commissioner, or consul of the United States appointed to reside therein.

Corporations. Any number of persons not less than five may associate themselves and become incorporated for the purpose of building and carrying on railroads and other semi-public works and business, with power of eminent domain. Any number of persons not less than three may be incorporated for the purpose of engaging in any lawful business. The minimum amount of capital stock shall in no case be less than $10,000, and shall be divided into shares of not less than $10 nor more than $100, except the capital stock of mutual building and loan associations may be divided into shares of $200 each. The capital stock and number of shares may be increased at any regular or special meeting of the stockholders. The articles of incorporation shall contain: 1. The name of the corporation, the general nature of the business, and the principal place, if any, of transacting the same. 2. The time of commencement and the period of continuance of said corporation. 3. The amount of capital stock of said corporation and how to be paid in. 4. The highest amount of indebtedness or liability to which said corporation shall at any time be subject. 5. The names and places of residence of the persons forming such association for incorporation. 6. The names of the first board of directors, and in what officers or directors the government of the corporation and the management of its affairs shall be vested, and when the same elected. 7. The number and amount of the shares of the capital stock of said corporation. Said articles of incorporation are required to be published for one week in some newspaper printed and published at the capital of the State, or in some newspaper printed and published in the county where said corporation is organized, and the same shall be filed for record in the office of the secretary of State, and also in the office of the register of deeds for the county where said corporation has its principal place of business. Each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him. This is a constitutional provision and is held to impose a double liability on the stockholders of all corporations, except manufacturing corporations. Every corporation for pecuniary profit, organized in any other State, before it can transact any business in this State, acquire, hold, or dispose of property, sue or maintain any action, shall maintain a public office in this State for the transaction of its business, and appoint an agent, who shall reside in the county in which said public office is located, duly authorized to accept service of process, and upon whom service of process may be made in any action. A duly authenticated copy of the appointment of such agent shall be filed in the office of the Secretary of State, and a certified copy shall be prima facie evidence of the appointment and authority of such agent. Every such corporation shall file in the office of the Secretary of State a copy of its charter, certificate, or articles of incorporation, duly authenticated, and a statement, duly sworn to, showing the proportion of its capital stock which is represented by its property located and business transacted in this State; and such corporation shall be required to pay into the State treasury the sum of $50 for the first $50,000, or fraction thereof, of such proportion of capital stock, and the further sum of $5 for every additional $10,000, or fraction thereof, of such proportion of capital stock, and no increase in the capital stock of any corporation shall be valid or effectual until such corporation shall have paid into the State treasury the sum of $5 for every $10,000, or fraction thereof, of such increase of such proportion of capital stock. In determining the proportionate share of the capital stock upon which it shall pay license fees, as aforesaid, the business of such corporation transacted in and out of this State during the year immediately preceding the filing of its articles shall be considered and control. Upon a compliance with said provision the Secretary of State shall execute and deliver to such corporation a certificate that it has duly complied with the laws of this State, and is authorized to do business herein, stating the amount of its capital, and of the proportion thereof which is located in this State, and such certificate shall be prima facie evidence that the said corporation is entitled to all

the rights and benefits of this law, and of the valid creation and incorporation of such corporation; and such corporation shall enjoy those rights and benefits for a period of thirty years from and after the date of such certificate, unless the charter or corporate existence of such corporation shall sooner expire under its own provisions, or those of the State under whose laws it is created; and the rights and privileges of such corporation to hold property in this State may be renewed for like periods by refiling its articles of incorporation with the Secretary of State, and by the payment of like fees whenever, pursuant to the provisions of this act, its rights and privileges shall expire. Every such corporation which shall neglect to comply with the provisions of this law shall be subject to a fine of $1,000. No corporation which shall fail to comply with the provisions of this law shall maintain any suit or action, either legal or equitable, in any of the courts of this State; *provided*, this act shall not apply to corporations engaged in exclusively manufacturing business in this State, nor to drummers or traveling salesmen soliciting business in this State for corporations which are entirely non-resident, nor to any corporation engaged only in the business of loaning money or investing in securities in this State, including all business incidentally growing out of the same, or in any manner affect corporations which may be organized for the purpose of raising and improving live stock, cultivating and improving farm, garden, or horticultural lands, growing sugar beets, or any corporation founded for the purpose of canning fruits or vegetables, or any corporation whose sole business in this State is transportation of freight or passengers, or both freight and passengers, by water.

Courts. *Terms and Jurisdiction.* District courts, holding one or more terms a year in each organized county (one every month in Ramsey county), have original jurisdiction in all civil actions involving over $100; in all actions where a justice has not jurisdiction, without regard to amount; and in all equitable actions and proceedings, and may issue process in term time or vacation throughout the State, returnable to the proper county. A probate court with usual powers is established in each organized county, and holds term on the first Monday of each month. Justice's jurisdiction, $100. A municipal court is established in all cities and villages of over 3,000 inhabitants, which are courts of record, with jurisdiction coextensive with the counties in which they are severally situated, and possessing general powers of common law courts, excepting equity jurisdiction, and where title to real estate is involved, in matters in controversy where the amount involved does not exceed $500.

Days of Grace. *(See Notes and Bills of Exchange.)*

Depositions. Depositions may be taken at any place within or without the State upon notice given to the opposite party giving one day for every hundred miles, excluding Sundays, and one day for preparation. The same may be taken before any officer authorized to administer an oath.

Descent and Distribution of Property. The usual allowances are made to widow and children out of personal property. Widow has a life estate in homestead, remainder in children; if no children, goes to the widow in fee, free of all claims or debts of deceased. After payment of debts residue distributed as follows: The surviving husband or wife shall also be entitled to and shall hold in fee simple, or by such inferior tenure as the deceased was at any time during coverture seized or possessed thereof, one equal undivided one-third of all other lands of which the deceased was at any time during coverture seized or possessed, free from any testamentary or other disposition thereof to which such survivor shall not have assented in writing, but subject, in its just proportion with the other real estate, to the payments of such debts of the deceased as are not paid from the personal estate. The residue of said other lands, or if there be no surviving husband or wife or such intestate, then the whole of said lands shall descend, subject to the debts of the intestate, in the manner following: 1. In equal shares to his children, and to the lawful issue of any deceased child, by right of representation. 2. If there be no child, and no lawful issue of any deceased child of the intestate living at his death, and the intestate leaves a surviving husband or wife, then the whole of his or her estate shall descend to such survivor. 3. If the intestate leave no issue nor husband or wife his estate shall descend to his father. 4. If the intestate leaves no issue nor husband or wife nor father, his estate shall descend to his mother. 5. If the intestate leaves no issue nor husband or wife, nor father or mother, his estate shall descend in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister, by right of representation. 6. If the intestate leaves no issue and no husband or wife, and no father, mother, brother or sister, his estate shall descend to his next of kin, in equal degree; excepting that when there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote. 7. If any person dies leaving several children, or leaving one child and the issue of one or more other children any of such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal share to the other children of the same parent, and to the issue of any such children who have died, by right of representation. 8. If, at the death of such child who dies under age and not having been married, all the other children of his said parent are also dead, and any of them has left issue, the estate that came to said children by inheritance from his said parent shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall have the said estate equally; otherwise, they shall take according to the right of representation. 9. If the intestate leaves no issue, nor husband or wife, or kindred, his estate shall escheat to the State.

Divorce. Grounds for divorce are: 1. Adultery. 2. Impotency. 3. Cruel and inhuman treatment. 4. When either party subsequent to the marriage has been sentenced to imprisonment in the State prison. 5. Willful desertion for the term of one year next preceding the filing of complaint. 6. Habitual drunkenness for the space of one year immediately preceding the filing of the complaint. No divorce will be granted unless the complainant has resided in this State one year immediately preceding the time of exhibiting the complaint, except for adultery committed while the complainant was a resident of the State.

Dower is abolished. *(See Descent and Distribution.)*

Executions may issue from district courts at any time within ten years after judgment, and to any county where a transcript has been docketed. Executions are returnable in sixty days, but may be renewed for sixty days at a time for any length of time, upon the request of judgment creditor or his attorney. Personalty is first levied on, and is sold on ten days' notice; real estate after six weeks' publication. In justice's courts execution may issue ten days after entry of judgment, returnable in thirty days, and renewable from time to time for periods of thirty days. Executions in municipal courts the same as in justice courts, except that they may issue at once. In courts of record six months' stay is granted on defendant filing bond with two freehold sureties, approved by the court, conditioned to pay amount of judgment with costs, and interest at the rate of 10 per cent per annum. Stay in justice's courts may be had in same manner, where judgments under $10, one month; $10 to $25, two months; $25 to $50, three monhts; $50 to $75, four months; over $75, six months. Real estate sold on execution is subject to redemption for one year from date of sale. Attorney of record can satisfy judgment at any time within two years after entry.

Exemptions. Surviving husband or wife holds homestead free from debts of deceased for life of survivor. Homestead of eighty acres in country; half an acre if in city, town, or village not incorporated, and of less than 5,000 inhabitants, and one lot if in larger cities, towns, or villages, with buildings thereon, without regard to value. Family pictures, library and musical instruments, wearing apparel and household furniture, up to $500; three cows, ten swine, twenty sheep, and wool from the same, a yoke of oxen and a horse, or, in lieu thereof, a span of horses or mules; necessary food for stock for one year; wagon, plows and farming utensils up to $300; necessary seed grain for the actual personal use of the debtor for one season, to be selected by him; not, however, in any case to exceed the following kinds and amounts respectively, viz.: one hundred bushels of wheat, fifty bushels of oats, one hundred bushels of potatoes, ten bushels of corn, and one hundred bushels of barley, and binding material sufficient for use in harvesting the crop raised from the seed grain above specified. One watch, the tools and instruments of a miner, mechanic or other person, and stock in trade up to $400; library and instruments of a professional man; one sewing machine; one bicycle; one typewriter; $20 wages of laboring man or woman, for services rendered within thirty days preceding the issue of process. Also, where the debtor is a printer, publisher or editor of a newspaper, all the presses, stones, type, cases and other tools and implements not exceeding $2,000, and stock in trade up to $400. All moneys received by any surviving wife or child from all life insurance upon the life of any deceased husband or father not exceeding ten thousand dollars. The library, etc., used in instruction, belonging to any school indiscriminately open to the public.

Holidays. January 1st; February 12th; February 22d; May 30th; July 4th; first Monday in September (Labor day); Tuesday next after first Monday in November in each even numbered year (election day); December 25th, are full legal holidays. Thanksgiving day and Good Friday are holidays in so far that negotiable instruments or contracts due or payable on such days shall be payable or performable on the next preceding business day, and in case of non-payment shall be protested on such preceding day.

Interest. Six per cent is the legal rate of interest upon every legal indebtedness, including judgments and accounts. The highest rate of interest allowed to be taken by special contract is 10 per cent. All usurious contracts are void, and court will decree cancellation.

Judgments. If no defense is made, judgments can be obtained at the expiration of twenty days in district court, and upon being in docketed the office of the clerk of the court, they become liens upon all real estate of the debtor in the county where docketed, owned by him at that time or afterwards acquired, for ten years after date of docketing, and can be enforced during that time by execution against the real or personal property of judgment debtor. Judgments in municipal courts may be docketed in district court and become a lien. Also judgments of United States court become liens, as above, when docketed in proper court.

Liens. Statute gives lien for work and labor performed or skill furnished by mechanic on any building, boat, or vessel, and for materials furnished for the erection, alteration, or repairing of any building, boat, or vessel, or on anything manufactured or repaired to the extent of the amount of repairs or material; also gives to servants and clerks a lien on personal property, not to exceed $200 in amount, for work performed within six months next preceding filing of lien. All liens must be filed within ninety days from date of last item of work or labor or material furnished.

Limitations to Suits. On contracts, express or implied, six years; on judgments, ten years; to forclose mortgages, fifteen years; real actions, fifteen years. Revivor: Part payment or new promise in writing.

Married Women. All property acquired by wife before or after marriage remains her separate estate, neither controlled by nor liable for the debts of her husband. Married women are held on their contracts and bound by them the same as if unmarried; except, a married woman can not sell her real estate, or make any conveyance of land other than a mortgage for the purchase money or a lease for three years or less, without her husband joins in the conveyance. The deed of a married woman to her husband, or vice versa, is absolutely void. Necessaries furnished to and used by the family are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

Mortgages on real estate must be recorded with register of deeds of county where real property is situate, acknowledged, and have two witnesses, and are foreclosed by action or publication. A year is allowed for redemption. *(See Chattel Mortgages.)*

Notes and Bills of Exchange. Commercial paper is that class of paper usually designated as such by the law of merchant; viz., notes, bills, drafts, etc. On all bills of exchange payable at sight, or at a future day certain, and on all negotiable promissory notes, orders, and drafts payable at a future day certain, within this State, in which there is no express stipulation to the contrary, grace is allowed of three days. No grace on demand paper. Bills of exchange, drafts, promissory notes, and contracts due or payable, or to be executed on Sunday, or any legal or bank holiday, shall be payable or performed upon the business day next preceding such days, and in case of non-payment or non-fulfillment shall be noted and protested upon such preceding day, but notice of dishonor, non-payment, or non-fulfillment need not be given until the business day next following the days above specified.

Right to Hold Property. It shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens; or for any corporation not created by or under the laws of the United States, or some State or Territory, to hereafter acquire, hold or own any real estate so hereafter acquired, or any interest therein, in this State, except such as may be acquired by devise or inheritance, or in good faith in the ordinary course of justice in the collection of debts hereafter created, or to the foreclosure of mortgages, except actual settlers on farms of not more than 160 acres. The above prohibition does not apply in cases where right to hold land in the United States is secured by existing treaties to citizens of foreign countries, nor to actual settlers upon farms of not more than 160 acres, who may settle

thereon before January 1, 1889. No corporation or association, twenty per centum of the stock of which is or may be owned by any person or persons, associations or corporations, not citizens of the United States, shall hereafter acquire, hold or own any real estate in this State. No corporation, other than those organized for construction or operation of railways, turnpikes or canals, shall acquire, hold or own over 5,000 acres of land so hereafter acquired in this State, and that no railroad, canal or turnpike corporation shall hereafter acquire, hold or own other than may be necessary for the proper operation of its railway, canal or turnpike, except lands granted by United States or State. All lands acquired, held or owned in violation of the provisions of this act shall be forfeited to this State. It is the duty of the attorney-general to enforce any such forfeiture by due process of law.

Suits. There is only one form of action, and all civil actions must be prosecuted in the name of the real party in interest, except suits by administrators, etc. (*See Actions.*)

Taxes become due and payable on the first Monday in January in each year; personal property tax delinquent March 1. Sheriff to levy distress on personal property after April 1, and sell for tax. A penalty of 10 per cent attaches to personal property March 1. A penalty of 10 per cent attaches to real estate June 1, unless one-half the tax has been paid, in which case the penalty attaches on November 1. On the first Monday in January an additional 5 per cent attaches to delinquent real estate taxes. Real property sold on first Monday in May; three (3) years redemption allowed; a notice must be served upon owner ninety days before time of redemption expires. Redemption by minor heirs two years after obtaining majority.

Wills. Every person of full age and sound mind may devise and dispose of any property by his last will and testament in writing. And any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, and may alter or revoke the same in like manner as if she were unmarried. Said wills shall be in writing and signed at the end thereof by the testator or by some person in his presence and by his express direction, and attested and subscribed in his presence by two or more competent witnesses. All devises, legacies, or gifts made in any will to a subscribing witness thereto shall be void unless there are two other competent subscribing witnesses to the same.

SYNOPSIS OF THE LAWS OF MISSISSIPPI

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. Brame & Brame, Attorneys at Law, Jackson. (*See Card in Attorneys' List.*)

Accounts. Affidavit to account sued on entitles plaintiff to judgment, unless defendant files affidavit denying its correctness and particularizing items. The affidavit must be by the creditor or his agent, not by one styling himself book-keeper merely, and must state that the account is correct and is due from the debtor The same rule applies in favor of a defendant who relies upon an account as a set-off.

Acknowledgments in the State may be before any judge of the supreme or circuit court, any chancellor, clerk of a court of record under his seal, justice of the peace, notary public, or member of the board of supervisors. Acknowledgments in another State may be before any of the judges of the supreme court, or any district judge of the United States, or a judge of the supreme or superior court in any State or Territory, any justice of the peace, whose official character shall be certified to under the seal of some court of record in his county, or by any commissioner residing in such State or Territory, appointed by the governor of Mississippi, or a notary public or a clerk of a court of record having a seal of office. Acknowledgments or proof of deeds to property in this State by persons in a foreign country may be made before any court of record, or the mayor or chief magistrate of any city, borough, or corporation where the grantor or witnesses reside, or may be; or before any commissioner appointed by the governor of this State, or before any ambassador, foreign minister, secretary of legation, or consul of the United States. The certificate shall show that the party or party and witness were identified before the officer, and that the party acknowledged the execution of the instrument, or that the execution was duly proved by the witness or witnesses. (Code 1892, §§2466, 2467.)

Actions. All distinction as to forms of action are abolished. Service must be had both in circuit and justices' courts five days before return day. All actions ex contractu in the circuit court in which the defendant has been personally served with process thirty days before the return day, actions of mandamus and quo warranto, actions to enforce mechanics' liens, actions commenced by attachment, and actions of replevin shall be triable at the return term. (Code 1892, sec. 722.)

Administration of Estates. Had in chancery court, according to will, if any. All claims against a deceased person must be registered within one year after the first publication of notice to creditors to present their claims; otherwise they will be barred. The presentation of a claim and the registration thereof, as required, stops the running of the general statute of limitations as to such claim. All debts are to be paid before heirs, distributers, or legatees receive any part of estate. Claims against insolvent estates are paid *pro rata*.

Affidavits or Oaths may be taken before a judge of any court of record, clerk of such court, master in chancery, member of the board of supervisors, justice of the peace, notary public, mayor, or police justice of a city, town or village; in another State by any officer thereof, or of the United States, authorized by the law of such State to administer oaths.

Aliens. No restrictions on the rights of resident aliens to acquire property or dispose of it. Non-resident aliens can not hold land, but may take liens thereon to secure debts and purchase at foreclosure thereof, and thereafter hold it for not longer than twenty years, with power to sell to a citizen in fee; or he may retain it by becoming a citizen. Land held or acquired contrary to the statute escheats. Law not applicable against a citizen or prospective citizen who acquires land in good faith, notwithstanding alienage of a former owner.

Appeals from justice court to circuit court may be taken within five days. From circuit and chancery courts to supreme court within two years; infants and persons under disability have two years after removal of disability. Appeals also lie in certain cases from board of supervisors and municipal courts to circuit court.

Arbitration. Parties may submit controversies to arbitration of one or more disinterested arbitrators, with agreement that proper court shall enter judgment in accordance with the award. But the court may modify, correct, or vacate the award and order a new hearing. Matters of account may likewise be referred by the court to referees. Arbitration may also be had by agreement without the intervention of a court.

Arrests made by certain officers, or private persons may arrest for offense committed in his presence, subject to certain conditions. No arrest or imprisonment for debt.

Assignments and Insolvency. No insolvent law. Debtor, though insolvent, may make assignments and may prefer creditors, if in good faith and no benefit, direct or indirect, is reserved to himself. There is no provision for the discharge of a debtor on his making an assignment. No statute governing partial assignments. In general assignments, where the value of the property exceeds $1,000, the assignee must give bond and administer the trust in the chancery court. Schedules and inventories are to be filed. Creditor may file petition, and, by showing assignment is fraudulent, have priority for his debt. In such case invalidity of assignment must be established to the satisfaction of the court. Preferences not prohibited. Assignor must file schedule of debts and assets, and must make oath to same. Otherwise than as stated, assignments are governed by the general law.

Attachment. In advance of judgment, may issue against the property of a debtor who is a non-resident or who removes or is about to remove himself or property out of the State; who absconds or conceals himself; or who incurred the debt in conducting the business of a ship, steamboat or other water craft in some of the navigable waters of this State; or who assigns or disposes of his property, or some part thereof, or is about to assign or dispose of his property with intent to defraud his creditors; or who has property or rights in action which he conceals and unjustly refuses to apply to the payment of his debts; or who has converted or is about to convert his property into money or evidences of debt, with the intent to place it beyond the reach of creditors; or who has fraudulently contracted the debt or incurred the obligation for which suit has been or is about to be brought, may be attached. In addition to those named above, the following grounds exist: "9. That the defendant is buying, selling, or dealing in, or has within six months next before the suing out of the attachment, directly or indirectly, bought, sold, or dealt in future contracts, commonly called 'futures.' 10. That he is in default for public money, due from him as a principal, to the State, or some county, city, town, or village thereof. 11. That defendant is a banker, banking company, or corporation, and received deposits of money, knowing at the time that he or it was insolvent; or has made or published a false or fraudulent statement as to his or its financial condition." Attachments for debts not due allowed for last six grounds—or when the creditor has just cause to believe that the debtor will remove himself or his effects out of State before debt will be due, with intent to defraud. Non-resident creditors have the same rights of attachment as resident creditors, whether the debtor be resident or non-resident. Attachments constitute liens on the property in the order in which the writs are levied. Plaintiff must furnish bond in double the amount of the debt and make affidavit as to one or more of the grounds specified above. The suit does not abate on verdict for defendant, on a plea denying grounds of attachment; but judgment may be rendered on the debt, to be offset by any verdict of damages in favor of defendant for wrongfully suing out attachment. Any other creditors may intervene and contest ground of attachment, if defendant omits to do so. Garnishment may issue on attachment or judgment.

Attachment in Chancery may be had, on bill filed, against the property, effects, or debts of an absent, non-resident, or absconding debtor. A lien is acquired by the commencement of suit. If a writ of sequestration for the seizure of goods is obtained, bond is required.

Banks. No provisions in regard to banks in the constitution; they are governed by their charters and the common law. There are, however, some statutes to prevent insolvent banks from continuing business. There is no system of official examination, but all, except National banks, are required to make a report, not less than four times each year, to the auditor. And the auditor shall make requisition on all banks for these reports to be made as of dates prior to the date of the requisition, and such date to be known only to himself. Such reports shall be verified and shall be published in full in a newspaper of the town or city where the bank is located. Resources and liabilities shall be stated in such reports. Banks collecting drafts with bill of lading attached must hold funds at least twenty-four hours.

Bills of Exchange. (*See Notes and Bills.*)

Bills of Lading. Bills of lading, and warehouse receipts or instruments in the nature thereof, are made conclusive evidence in the hands of every bona fide holder, as against the person or corporation issuing the same, that the property was actually received for shipment or storage.

Building and Loan Associations do business according to the usual plan of such associations. Ten shares owned by any one person exempt from taxation. Local building and loan associations dealing only with their members are exempted from the effect of the usury laws.

Chattel Mortgages and Deeds of Trust may be executed and recorded as other mortgages. Foreclosure is usually by trustee's sale. If property be removed to another county, mortgage must be there recorded within twelve months to affect purchasers without notice. Mortgages on property to be acquired are valid, but not on a changing stock of goods if the mortgagor remain in possession and continue business. Reservation of title by the seller of a chattel to secure purchase money is valid without record, even against purchasers without notice. But if possession remain three years in such purchaser, he is to be deemed the owner.

Collaterals. No statutes. The general law prevails.

Commercial Travelers for houses or firms outside the State are not required to pay privilege tax.

Common Law is in force except as modified by constitution or statutes.

Conditional Sales. (*See Chattel Mortgages.*)

Contracts for sale of land, or for lease thereof for more than one year, required to be in writing. Same in regard to sale of chattels of the value of more than $50, unless delivery in whole or in part is made to buyer. Dealing in futures is forbidden and made a ground for attachment. Contracts with any person who carries on any business without paying the required privilege tax in reference to that business are void and not enforceable by such person. All gambling contracts and ordinary contracts made on Sunday are void.

Conveyances. Deeds may be made to vest title presently or in future. All estates in land greater than for one year must be conveyed by deed, and to affect purchasers without notice must be recorded. Estates tail are prohibited, except that a deed or devise may be made to a succession of living donees not exceeding two and to the heirs of the body of the remainderman, or, in default thereof, to the right heirs of the donor in fee. Corporations may convey by deed under seal. In all other cases private seals are abolished. Conveyances or devises to two or more, or to husband and wife, create tenancy in common. Rule in Shelly's case is abolished. Remainder is good without particular estate. The words "grant, bargain, and sell" operate as a covenant that grantor is seized of some estate of inheritance. Words "convey and warrant" operate as a general covenant of warranty of title. The words "convey and warrant specially" operate as a warranty of title only against the grantor or those claiming under him. A quitclaim deed has practically the same effect. Husband and wife, if living together, must both join in conveyance or incumbrance of homestead of either, or it will be void as to all over $2,000.

Corporations can be formed only under general laws. Any charter granted after November 1, 1890, may be amended or repealed, provided no injustice be done stockholders. No charter grantable for a period longer than fifty years. Manufacturing corporations and banks may hold property not exceeding $1,000,000; other corporations not exceeding $250,000. Charters must be published, approved by the attorney-general and governor, and recorded with secretary of State. Stockholders are liable personally to the amount of unpaid subscriptions. Stockholder or employe in rival corporation can not serve as director without consent of majority in interest of the stockholders. Corporations other than banks and building and loan companies can not loan money to stockholders. Directors assenting are liable personally to creditors if they allow capital to be withdrawn or dividend declared by insolvent corporation. They are also liable for debts in excess of capital stock paid in. Foregoing laws do not apply to railroads and insurance companies. There is little or no limitation on the power of foreign corporations to do business. They may transact business, sue, and be sued as domestic corporations or as non resident natural persons. The legislature is forbidden to license a foreign corporation to build, purchase, operate, or lease a railroad in this State unless its stockholders or owners become incorporated here. (*See Transfer of Corporate Stock.*)

Costs. Non-resident plaintiff or complainant may be required to give security for. This is true also of insolvent persons. In attachment and injunction suits, and in cases where writs of sequestration are issued the plaintiff's bond is security for costs in the event the suit is unsuccessful.

Courts. *Terms and Jurisdiction.* Justices' courts meet not less than once each month; circuit and chancery courts meet in each county twice a year; supreme court meets twice a year, in October and March. Justices' courts have jurisdiction for the recovery of debts and damages not exceeding $200. Circuit courts have general jurisdiction of all common law actions where the amount or value in controversy exceeds $200, and jurisdiction of appeals from justices' and mayors' courts, and boards of supervisors. Chancery courts have jurisdiction of the administration of estates of deceased persons, of minors' business and other probate matters, and of all matters in equity. Appeals may be taken to the supreme court from any final judgment of the circuit court, and from the chancery court, except in suits for not more than $50 originating in the justice's court. Suits of equitable cognizance improperly brought in the circuit court are transferred to chancery court, and *vice versa*. No suit dismissed because being of an equitable nature it is improperly brought in the circuit court, and *e converso*.

Creditors' Bills may be filed under general to subject equitable assets and in aid of execution at law. Such bills may, under the statute, be filed to subject property of a debtor fraudulently conveyed, without a judgment and return of *nulla bona*; and this whether complainant's debt is due or not. No bond is required unless a sequestration is desired. If complainant prevails he has a lien on the property sought to be subjected from the date of filing the bill.

Curtesy and Dower. Both abolished since 1880.

Days of Grace. Inland and foreign bills of exchange and promissory notes for a sum certain payable only in money are entitled to three days of grace; other contracts are not. (*See also Notes and Bills.*)

Deeds. (*See Conveyances.*)

Depositions taken only in civil cases, on written or verbal interrogatories; ten days' notice to be given of issuance of commission. If party is absent and has no attorney, filing interrogatories ten days sufficient notice. Commission to take deposition of witness out of State may be to one or several commissioners by name, in the alternative, or to any judge of a court of record, justice of the peace, mayor, or chief magistrate of a city or town, commissioner appointed by the governor of this State, or other person authorized to administer oaths by the law of the place where the deposition is to be taken. The officer shall swear the witness to testify the truth, and shall impartially examine him on the interrogatories. The testimony shall be fairly written down by the officer or witness, or by a disinterested person in the presence of, and shall be subscribed by the witness. Depositions shall then be certified and sealed up by the officer, and transmitted by mail or other safe and convenient manner to the court where the same are to be used. Officer's certificate prima facie evidence of his character and authority.

Descent and Distribution. Estates of inheritance, both real and personal, of an intestate descend: 1. To children and their descendants per stirpes. 2. To brothers and sisters in equal parts and their descendants by representation. 3. To the father and mother, or the survivor of them. 4. To the next of kin according to the civil law. Except among brothers and sisters there is no representation among collaterals. Advancements must be brought into hotchpot. There is no distinction between children of the whole blood and those of the half blood, except that children of the whole blood are preferred to those of the half blood in equal degree. Where there is no one to inherit from an intestate, property escheats. Illegitimates inherit from the mother and her kindred. Exempt property of husband or wife descends to survivor and their children as tenants in common. (*See Married Women.*)

Divorces may be granted for: 1. Natural impotency. 2. Adultery, in the absence of collusion. 3. Sentence to the penitentiary unless pardoned before being sent. 4. Willful, continued and obstinate desertion for the space of two years. 5. Habitual drunkenness. 6. Habitual and excessive use of opium, morphine or other like drug. 7. Habitual cruel or inhuman treatment. 8. Insanity or idiocy at the time of the marriage if party complaining did not know of it. 9. Marriage to some other person at the time of the pretended marriage. 10. Pregnancy by another man at the time of the marriage if the husband did not know of it. 11. Either party may obtain divorce if they be related within the prohibited degree of kinship.

Dower and Curtesy have been abolished since 1880.

Executions in circuit court issue within twenty days after the adjournment of court unless otherwise ordered by the plaintiff, and in justice's courts after the lapse of five days from judgment rendered, unless recovering party makes affidavit that he is in danger, by delay, of losing his debt or demand, in which case execution issues forthwith. No redemption of lands or other property sold under execution or mortgage. Execution not valid after judgment is barred by limitation, which is seven years after rendition or renewal. (*See Judgments.*)

Exemptions. Residence of householder, male or female, being a citizen of this State, and having a family, 160 acres in country, or residence and lot in city, town, or village, in no case exceeding, with improvements, $2,000 in value. The proceeds of insurance on property exempt by law, and the proceeds of the sale of exempt property. The following personal property is exempt: The tools of a mechanic necessary for carrying on his trade. The agricultural implements of a farmer necessary for two male laborers. The implements of a laborer necessary in his usual employment. The books of a student required for the completion of his education. The wearing apparel of every person. The libraries of all persons not exceeding $250 in value; also the instruments of surgeons and dentists, used in their profession, not exceeding $250 in value. The arms and accouterments of each person of the militia of the State. All globes and maps used by the teachers of schools, academies, and colleges. The following property of each head of a family, to be selected by the debtor, is exempt: 2 work-horses or mules and 1 yoke of oxen; 2 cows and calves; 20 head of hogs; 20 sheep or goats; all poultry; all colts under three years old raised in this State by the debtor; 250 bushels of corn; 10 bushels of wheat or rice; 500 pounds of pork, bacon, or other meat; 100 bushels of cotton seed; 1 wagon, and 1 buggy or cart, and 1 set of harness; 500 bundles of fodder, and 1,000 pounds of hay; 40 gallons of sorghum or molasses; 1,000 stalks of sugar-cane; 1 sugar-mill and equipments not exceeding $150 in value; 1 bridle and saddle, and 1 side saddle; 1 sewing machine; household and kitchen furniture not exceeding in value $200. And the following is exempt from garnishment or other legal process: The wages of every laborer or person working for wages, being the head of a family, to the amount of $100, and every other person to the amount of $20; the proceeds of a life insurance policy, to an amount not exceeding $10,000 upon any one life, shall inure to the party or parties named as the beneficiaries thereof, free from all liability for the debts of the person whose life was insured, even though such person paid the premiums thereon; the proceeds of a life insurance policy not exceeding $5,000, payable to the executor or administrator of the insured, shall inure to the heirs or legatees, freed from all liability for the debts of the decedent; but, if the life of the deceased be otherwise insured for the benefit of his heirs or legatees at the time of his death, and they shall collect the same, the sum collected shall be deducted from the $5,000 and the excess of the latter only shall be exempt. A householder having a family, residing in a city, town, or village, entitled to $250 worth of personal property to be selected by him, or the other articles specified and enumerated above. No property exempt as against purchase money, but the same liable to seizure at the suit of the vendor while in the possession of the first vendee. Nor is any property exempt from taxes, or for labor done or materials furnished or in case of judgment on a forfeited bail bond or recognizance.

Foreign Corporations may do business and sue and be sued as in case of domestic corporations. But contracts against the laws or policy of this State are void. (*See Corporations.*)

Fraud and Fraudulent Conveyances. (*See Attachment, Bills of Lading, Limitations, Creditor's Bill.*)

Garnishment may be issued on judgments or in attachment. Officer holding an attachment writ may also issue garnishments. Binds debts or property of debtor in garnishee's hands from the time of service.

Grace. (*See Days of Grace, and Notes and Bills.*)

Holidays. New Year's Day, Fourth of July, Thanksgiving Day and Christmas Day.

Husband and Wife. The disabilities of coverture are abolished, as are dower and curtesy. Husband and wife may contract with and sue each other, but contracts for compensation for services rendered to each other are void. If husband rents wife's land, mules, etc., and does business in his own name, it will be deemed the business of the wife as to those without notice, unless the contract be recorded. Transfers between are void as to third persons unless recorded. (*See also Married Women and Wills.*)

Injunctions. In chancery court, issued on sworn bill after bond given.

Insolvency. No general insolvent laws, but insolvent estates of decedents are divided among creditors pro rata. Personal property sold on credit may be seized while in the hands of the first purchaser for non-payment of price. In case of insolvency partnership property is applied first to partnership debts, and *e converso*.

Installment Leases of personal property may be made. Title may be reserved by seller until payment of purchase money. Such reservation not required to be in writing or to be recorded. Good against third persons even without notice. No statute on the subject.

Interest. The legal rate of interest is 6 per cent per annum, but parties may contract in writing for 10 per cent; when more is stipulated for or collected, all interest is forfeited, and, if paid, may be recovered.

Judgments when enrolled in circuit clerk's office become liens on defendant's property within the county, and lien may be extended to other counties by filing certified abstracts of the judgment. A junior judgment creditor may obtain priority as to property levied on by him, if, after ten days' notice, the senior judgment creditors fail to issue executions and point out the property. Lien of judgment continues seven years. (*See Executions.*)

Licenses. (*See Privilege Taxes.*)

Liens. Statute provides for various liens, as the lien of an enrolled judgment, of mechanics and material men, of landlord and laborer on agricultural products, innkeeper's and stablekeeper's lien. The seller of goods may enforce a lien for the price of the same, provided the goods are still in the hands of the purchaser. The procedure is by affidavit, filed at the commencement suit, stating that the purchase money is due and unpaid. On this a writ of seizure issues, and the goods are taken. Title to personal property may be reserved by the seller as security for the price, and this is good even as against a subsequent bona fide purchaser, without any writing or record. (*See Mortgages and Trust Deeds.*)

Limitations of Actions. Open accounts, accounts stated and verbal contracts, express or implied, three years; all other contracts, six

years; awards of arbitrators, six years; judgments and decrees rendered in another State against resident of this, three years; rendered in this, seven years; real actions, ten years. Actions to recover property sold under order of chancery court must be brought within two years, where possession is taken and purchase money paid in good faith. When the legal title to property or right in action is in an executor, guardian, or other trustee, beneficiary, though under disability, is barred when trustee is barred. Statute does not apply to suits on notes or evidences of debt of banks or other moneyed corporations. An acknowledgment of the debt or new promise must be in writing. Statute does not run during fraudulent concealment of cause of action, nor against infant or person *non compos mentis*, nor against a convict in actions for assault, etc., until after release, nor against State, county, municipality, or any political subdivision of State.

Limited Partnership. (*See Partnership.*)

Married Women retain their estate, real and personal; common law disabilities of coverture abrogated; have same capacity to make contracts and do all acts in reference to property which single women have. Dower and curtesy are abolished. If husband or wife dies intestate, leaving no children nor descendants, survivor inherits entire estate; but if deceased have child or children, or descendants of same, survivor inherits a child's part. Husband and wife must join in conveying or encumbering homestead. (*See also Husband and Wife and Descent.*)

Mortgages and Trust Deeds do not take effect as to creditors or purchasers in good faith and without notice until they are delivered to the clerk for record; with power of sale are foreclosed by sale *in pais;* without power of sale, by suit in chancery court, and after foreclosure there is no redemption. Chattel mortgages must be recorded, or possession of the property must pass, in order to charge purchasers or other third persons with notice. But not so as to conditional sales. (*See Chattel Mortgages.*)

Notes and Bills of Exchange must be protested and notice of non-payment given substantially as at common law, to bind parties entitled to notice. Promissory notes, unless indorsed, are not required to be protested; demand and notice are necessary to fix liability of parties secondarily liable. There is no law defining commercial paper. All notes, bills, drafts, etc., are assignable, and suit may be maintained in the name of the assignee; defendant can make all defenses which he had against payee before notice of assignment; but this does not apply to paper payable to bearer, or payable in another State or country where a different rule obtains. Foreign bills of exchange payable out of the United States, protested for non-acceptance or non-payment, draw 10 per cent damages and legal interest; bills drawn payable in the United States, protested for non-acceptance, draw damages at the rate of 5 per cent, besides legal interest. Checks, drafts and notes payable on demand, are not entitled to any days of grace; while notes, bills and drafts, foreign as well as inland, are entitled to three days of grace, and in this respect are the same as by the law merchant. Where a bank check is expressly made payable on a future day, or where, by the way it is drawn, it takes the character of a draft or bill of exchange, the weight of authority is that it is entitled to days of grace. Domestic bills of exchange drawn on and payable in this State for $20 or upward must be protested for non-acceptance, or, if accepted for non-payment; they are governed by the same customs and usages as foreign bills of exchange, but no damage accrues. When the day on which any bill or note would be by its terms presentable for acceptance or payment, according to its terms shall fall on Sunday, New Year's Day, Fourth of July, Thanksgiving Day, or Christmas Day, it shall be presented on the day before.

Partnership. Few statutory provisions. Governed by general law. In case of insolvency, partnership property must go to pay firm debts, and *e converso*. Provision made for limited or special partnerships.

Powers of Attorney. May be acknowledged or proved and recorded as deeds. May be revoked in like manner. Conveyances of land or other property under powers of attorney are valid.

Privilege Taxes. Merchants and others required to pay. If sufficient tax is not paid, contracts growing out of the business can not be enforced by the person in default. Non-residents selling goods in this State and commercial travelers not required to pay.

Probate Law. (*See Estates of Decedents.*)

Protest. (*See Notes and Bills of Exchange.*)

Redemption. No redemption from sales under mortgage, execution, or other judicial sale. Two years allowed for redemption of land sold for taxes, saving to minors and persons *non compos mentis* a like period after removal of disability.

Replevin lies to recover personal property wrongfully withheld from the owner. The property may be restored to defendant on bond. If he declines to bond, plaintiff may do so. If neither does, a claimant of the property may give the bond and receive possession. Damages may be assessed for wrongful taking or detention.

Savings and Loan Associations. (*See Building and Loan Associations.*)

Savings Banks. No statutes. (*See Banks.*)

Suits. (*See Actions.*)

Surety Companies. Domestic or foreign, allowed to do business. May make bonds for executors, administrators, guardians, and other trustees, and official bonds.

Taxes. Personal property is assessed once a year; real estate every four years, and taxes constitute a prior lien. Taxes are due on or before December 15th of each year. Land of delinquent is sold on first Monday of March following. The owner or any one interested may redeem within two years after the day of sale, on the payment of all taxes, costs, 25 per cent damages, and 5 per cent on amount paid by purchaser. Infants and persons of unsound mind may redeem within two years after removal of disability, on paying the value of permanent improvements put on the land after two years from date of sale.

Transfer of Corporate Stock is made by endorsement and delivery of stock certificate, and registry of transfer in the books of the company. (*See Corporations.*)

Trust Companies. Act passed in February, 1897, authorizing the organization of such companies or their doing business in this State, with general powers—to administer all trusts, make bonds and the like. But there is a question whether this act became a law, and no action has been taken under it.

Trust Deeds. (*See Mortgage and Trust Deeds.*)

Warehouse Receipts. (*See Bills of Lading.*)

Wills may be executed by anyone twenty-one years old, of sound mind. As to land, if not wholly written and subscribed by testator, execution must be attested by two subscribing witnesses. A nuncupative will (of personalty) may be made during last sickness of testator at habitation, or where testator has resided ten days next before death, or where person is taken sick from home and dies before return; must be proved by two witnesses that the testator called on some person to take notice that such is his or her will, or words to that effect. Soldiers and sailors in actual service may bequeath personalty free from statutory restrictions. A will may be probated in common or solemn form; if in common form, it may be contested within two years, and an issue is made up to be tried by a jury; if in solemn form on summoning all parties in interest probate is final. No restriction upon the power to dispose of property by will except in case of religious or charitable trusts or bequests. Provisions made for renouncing will by surviving husband or wife in certain cases.

SYNOPSIS OF THE LAWS OF MISSOURI

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. Gage, Ladd & Small, Attorneys at Law, Kansas City. (*See Card in Attorneys' List.*)

Acknowledgments. Acknowledgments, if taken within this State, shall be taken by some court having a seal, or some judge, justice, or clerk thereof, notary public, or some justice of the peace of the county in which the real estate conveyed or affected is situated; if taken without the State and within the United States, by any notary public, or by any court of the United States, or of any State or Territory having a seal, or the clerk of any such court, or any commissioner appointed by the governor of this State to take the acknowledgment of deeds. If taken without the United States, by any court of any State, kingdom, or empire having a seal, or the mayor or chief officer of any city or town having an official seal, or by any minister, or consul, or officer of the United States, or notary public having a seal.

Administration of Estates. The probate court in each county has jurisdiction of the settlement of the estates of deceased persons. Claims presented to the court for allowance within one year after the grant of letters testamentary or of administration are preferred over those presented later. Claims not presented within two years from the grant of letters are barred.

Aliens. No person not a citizen of the United States, or who shall not have declared his intention to become such, nor any corporation not created under the laws of the United States, or some State or Territory thereof, shall acquire, hold, or own real estate, or any interest therein in this State, except such as may be acquired by inheritance, or in good faith in the ordinary course of justice in the collection of debts. This provision does not apply in cases where the right to own real estate is guaranteed by treaty between the United States and any foreign nation.

No corporation, more than 20 per cent upon the stock of which is owned by persons, or corporations, not citizens of the United States, shall hereafter acquire, or hold, or own any real estate hereafter acquired in this State. The act of 1897 provides that nothing in the alien law shall be construed to prevent any person or corporation from acquiring an interest in any real estate as *cestui que* trust or mortgagee in any deed of trust or mortgage taken in good faith to secure money lent upon such real estate, nor as assignee of such *cestui que* trust or mortgagee, nor to prevent such person or corporation from purchasing such real estate at its sale upon foreclosure of such deed of trust or mortgage, when the amount for which such property is sold at said sale does not exceed the amount due under such deed of trust or mortgage at the time of such sale and the costs of such foreclosure; but all interest acquired by such person or corporation at such sale shall be forfeited to the State unless such person or corporation shall, in good faith, sell all such interest to a citizen of the United States within five years after the person or corporation so purchasing shall have held the possession of such real estate.

Appeals. (*See Courts.*)

Arbitration. Parties to a controversy may in writing submit the same to arbitrators. The award must be in writing, subscribed by the arbitrators and attested by a subscribing witness. The award may, upon motion, be confirmed by the court designated in the submission, fifteen days' notice of the motion having been given. Provisions exist for the vacation of the award on various grounds. Upon the confirmation of an award judgment is rendered which may be enforced as other judgments.

Arrest. No person can be arrested under civil process.

Assignments and Insolvency. Every voluntary assignment must be for the benefit of all the creditors of the assignor in proportion to their respective claims; must be proved or acknowledged and certified or recorded in the same manner as prescribed by law for the conveyance of the real estate. The assignee must within fifteen days file with the clerk of the circuit court a sworn inventory of the property assigned. The appointment of appraisers by the court may be made either before or after the filing of the inventory. The bond of the assignee is approved by the court, or judge, or clerk in double the amount of the estate assigned. The assignee appoints a day within three months after the assignment, and a place when and where he will proceed to adjust and allow demands against the estate. Four weeks' notice of the hearing is published in a newspaper and notice given by mail to the creditors if their residence be known. The assignee sits for three days for this purpose. A creditor failing to present his claim at the appointed time on account of sickness, absence from the city or other good cause, may afterward obtain its allowance. Appeal from the decision of the assignee upon any claim lies to the circuit court, which proceeds to hear the matter de novo. Within one month after the allowance of claims the assignee must pay out the money in his hands upon the allowed demands, and as often thereafter as a dividend of 5 per cent can be paid. The assignee in the administration of the trust is subject to the orders and directions of the circuit court. In no case does an assignment operate as a discharge of the assignor from liability for his debts. By the act of 1897 the assignee is declared to be a trustee for the benefit of the creditors of his assignor, and shall have power and authority to prosecute such actions for property, and

make such defense to claims against the assigned property as a trustee in a deed of trust, or an attachment or execution creditor with a writ levied on such property could prosecute or make.

Attachments. The plaintiff in any civil action may have an attachment against the property of the defendant in any one or more of the following cases: 1. Where the defendant is not a resident of this State. 2. Where the defendant is a corporation, whose chief office or place of business is out of this State. 3. Where the defendant conceals himself so that the ordinary process of law can not be served upon him. 4. Where the defendant has absconded or absented himself from his usual place of abode in this State, so that the ordinary process of law can not be served upon him. 5. Where the defendant is about to remove his property or effects out of this State with the intent to defraud, hinder, or delay his creditors. 6. Where the defendant is about to remove out of this State with the intent to change his domicile. 7. Where the defendant has fraudulently conveyed or assigned his property or effects, so as to hinder or delay his creditors. 8. Where the defendant has fraudulently concealed, removed, or disposed of his property or effects, so as to hinder or delay his creditors. 9. Where the defendant is about fraudulently to convey or assign his property or effects, so as to hinder or delay his creditors. 10. Where the defendant is about fraudulently to conceal, remove, or dispose of his property or effects, so as to hinder or delay his creditors. 11. Where the cause of action accrued out of this State, and the defendant has absconded or secretly removed his property or effects into this State. 12. Where the damages for which this action is brought are for injuries arising from the commission of some felony or misdemeanor, or for the seduction of any female. 13. Where the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon the delivery. 14. Where the debt sued for was fraudulently contracted on the part of the debtor. Attachments may issue on a demand not yet due in any of the above actions except the first, second, third, and fourth. An affidavit must be filed by the plaintiff stating the amount of his debt, and that he has good reason to believe, and does believe, in the existence of one or more of the causes for attachment above specified. Bond to the State of Missouri, executed by the plaintiff or some responsible person as principal, and one or more sureties, resident householders of the county, in double the amount of the debt, is required in every case, conditioned that the plaintiff shall prosecute his action without delay and with effect, refund all sums of money that may be adjudged to be refunded to the defendant, or found to have been received by the plaintiff and not justly due him, and pay all damages and costs that may accrue to any defendant, garnishee or interpleader by reason of the attachment, or any process, or proceeding in the suit, or by reason of any judgment or process thereon, and pay all damages and costs that may accrue to any sheriff or other officer by reason of acting under writ of attachment, following the instructions of the plaintiff. The bond is approved by the clerk of the court in which the action is brought. During the pendency of any civil action commenced by summons, plaintiff may, upon filing such affidavit and bond, obtain a writ of attachment. In the service of the writ the officer may levy upon real estate, and personal property or credits, and summon as garnishees persons who may owe or have in their possession property of the defendant. Property levied upon may be retained by the defendant or other person having possession of the same, by giving to the officer a bond in double the value of the property attached, conditioned that the same shall be forthcoming when and where the court shall direct. Property perishable, or the keeping of which would be attended by much loss or expense, may be ordered sold by the court. When notes, bills, accounts, or other evidences of debt are attached, a receiver may be appointed charged with the duty of their collection. Successive attachments on the same property enjoy precedence according to the priority of the levies. At the return term of the writ the defendant may file a plea in the nature of a plea in abatement, under oath, denying the existence of the facts alleged in the affidavit for the attachment. The issue thus raised is tried like other cases and is first disposed of. On this issue the plaintiff is bound to prove the existence of one or more of the causes alleged in his affidavit. If he fails, the attachment abates and is dissolved, but he may proceed with his action upon the merits and obtain a general judgment. From the determination of the issue raised by the plea in abatement, the unsuccessful party—the plaintiff or defendant—may appeal. Pending the suit the attachment may be dissolved on motion in behalf of defendant in the following cases: 1. When the affidavit on which the same was founded shall be adjudged by the court insufficient; but no attachment shall be dissolved in such case, if the plaintiff shall file a good and sufficient affidavit, to be approved by the court, in such time and manner as the court shall direct; such affidavit may embrace the same ground of attachment set forth in the previous affidavit, or any other grounds, or both, at the option of the affiant. 2. When the defendant shall appear and plead to the action, and give bond to the plaintiff, with good and sufficient security, to be approved by the court, in double the amount of the property, effects, and credits attached, conditioned that such property, effects and credits shall be forthcoming, and abide the judgment which shall be rendered in the cause, when and where the court shall direct. 3. When the defendant shall appear and plead to the action and give like bond and security in a sum sufficient to satisfy the amount sworn to, in behalf of the plaintiff, with interest and costs of suit, conditioned that defendant shall pay to plaintiff the amount which may be adjudged in favor of the plaintiff, interest and all costs of suit, on or before the first day of the next term after that at which judgment shall be rendered.

Banks are organized under a general law. Any five or more persons may associate themselves for the purpose of establishing a bank of deposit, or discount, or both, by filing articles of association. The cash capital must not be less than $10 000, nor more than $5,000,000. In cities having a population exceeding 150,000 inhabitants, the capital stock shall not be less than $100.000. The entire capital must be subscribed and one-half thereof actually paid up before corporate existence can be acquired, and the other half within one year. No person can be a director who is not a resident of this State, nor at the same time a director in two State banks, or in a national bank. Sworn statements of the condition of the corporation must be filed in the office of the secretary of State, whenever by him required, but not less than twice in each year. False statements, as well as the receipt, or assent to the reception of deposits, with knowledge of the fact that the bank is insolvent or in falling circumstances, are punishable by a fine or imprisonment. Loans of more than 25 per cent of its capital stock to any individual, corporation, or company are forbidden.

Examinations under the supervision of the secretary of State are provided for. Upon the impairment of the capital or misconduct in the management of the bank, the attorney general may institute proceedings for the removal of directors or the appointment of a receiver and the winding up of the business.

No person, or company of persons, may engage in the business of banking as private bankers without a paid-up capital of not less than $5,000.

Trust companies with the usual powers may be organized by three or more persons. One-fourth of the capital stock authorized by the articles must be subscribed, and one-half of the amount subscribed be paid up in cash. Actual subscriptions must not be less than $100,000, and the amount of authorized capital shall not exceed $10,000,000. The directors shall not be less than five, nor more than twenty-five in number, and a majority of them must be citizens of this State.

The system of examinations, and many of the penal provisions above mentioned, apply also to trust companies and private bankers.

Bills of Lading. Bills of lading and warehouse receipts are negotiable by written endorsement thereon and delivery in the same manner as bills of exchange and promissory notes. The issue of receipts by a warehouseman, except for property actually received into his store and under his control, is forbidden. A second receipt issued for the same property must have written across the face of the same duplicate. The statutes contain various provisions for the protection of persons holding warehouse receipts, and a violation of them by the warehouseman subjects him to heavy fines and imprisonment.

Chattel Mortgages. No mortgage on personal property is valid as against any other person than the parties thereto, unless possession of the mortgaged property be delivered and retained by the mortgagee or unless the mortgage be acknowledged or proved and recorded in the county in which the mortgagor resides in the same manner as conveyances of real estate, or unless the mortgage or deed of trust, or a true copy thereof be filed in the office of the recorder of deeds or the county where the mortgagor or grantor resides, or where the mortgagor is a non-resident of the State, then in the office of the recorder of deeds of the county, or city, where the property mortgaged is situated at the time of the execution of the mortgage. Every such mortgage shall cease to be valid as against the mortgagor or the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of five years from the filing of the same.

Conveyances. Conveyances of lands or any estate or interest therein must be subscribed by the party granting the same or by his lawful agent and acknowledged. Seals are abolished. Conveyances are to be recorded in the office of the recorder of deeds in the county in which the real estate is situated. Until such record, the conveyance is not valid except as between the parties thereto, and such as have actual notice thereof. Powers to convey real estate must be executed with the same formality as a conveyance. Husband and wife may convey the real estate of the wife, and the wife may relinquish her dower in the real estate of her husband, by their joint deed. In the case of natural persons a certificate of acknowledgment to a deed may be in the following terms:

State of..... } ss.
County of..... }

On this.....day of....., 19.., before me personally appeared A. B. (or A. B. and C. D.), to me known to be the person (or persons) described in and who executed the foregoing instrument and acknowledged that he (or they) executed the same as his (or their) free act and deed.

When a married woman joins her husband in the execution of any deed, she must be described in the acknowledgment as his wife; no other change in the phraseology of the certificate being necessary. In the case of natural persons acting by attorney, the certificate may be as follows:

On this .....day of ...., 19.., before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of C. D.

In the case of corporations or joint stock associations, it may be as follows:

On this .....day of ...., 19.., before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to foregoing instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association), by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association). No witnesses to the signatures of a deed are necessary.

Corporations. All corporations must be organized under general laws, the creation of them by special act of the legislature being prohibited by the constitution. Any three or more persons desiring to organize a manufacturing or business corporation may execute and acknowledge articles for that purpose. The amount of capital stock of such corporation must be not less than $2,000 or more than $10,000,000. Before a certificate of corporate existence issues, the whole of the capital stock must be subscribed and one-half thereof actually paid up in lawful money of the United States, and in the custody of the persons named as the first board of directors. The articles are filed in the office of the recorder of deeds of the county in which the corporation is to be located, and a certified copy thereof in the office of the secretary of State, who issues a certificate of incorporation. At the time of filing the articles, there must be paid into the State treasury $50 for the first $50,000 or less of capital stock, and the further sum of $5 for every additional $10,000. The directors must be not less than three nor more than thirteen in number; three of them must be citizens and residents of this State. The president, treasurer, and secretary must keep their offices at the general office of the company in this State, and all meetings of the board of directors must be held at such general office. No note or other obligation, whether secured or unsecured, shall be accepted as payment of any part of the capital stock. The capital stock of the corporation may be increased or diminished by a vote of the stockholders at a meeting of which sixty days' notice shall be published. An increase may be accomplished by the vote of the larger amount in value of all the shares, but no such increase shall take effect until at least one half thereof shall be paid up in lawful money of the United States; if it is desired that the increased stock, or any part thereof, shall be preferred, the proposition both for the increase and that it be preferred must be approved by all the shares of stock of the company. Manufacturing corporations whose objects and business are of the same general nature may consolidate by the action of the boards of directors and with the assent of the owners of at least three-fifths of the capital stock of each of the corporations. The bonded indebtedness of a corporation can not exceed its capital stock. No increase of its bonded indebtedness is valid without the consent of the persons holding a majority of the stock expressed at the meeting called for that purpose, notice of which must be published for sixty days. Stockholders having paid up their stock are not liable for any of the debts of the corporation. The circuit court has jurisdiction to compel directors and officers to account for their conduct in the management of the company, and to suspend or remove them for misconduct, and if necessary to order an election to fill vacancies caused by their removal. Special provisions exist for the organization and government of railroad, telegraph, and telephone, mutual building, mutual savings, booming and rafting, and benevolent, religious, scientific, educational, and miscellaneous corporations. Whenever the directors or a majority of the stockholders shall discover

that the property and effects of the corporation have been so far reduced that it will not be able to pay all just demands against it, or afford security to those dealing with it; or whenever stockholders holding two-thirds in value of the stock shall adopt a resolution favoring a dissolution of the corporation, whether it be indebted or not, or whether its stock has depreciated below its par value or not, the corporation may, upon a petition therefor by the president and secretary or a majority of the directors, be dissolved, by decree of the circuit court of the county in which its principal office is located.

Courts. The circuit court in each county is a court of general jurisdiction. At least two terms are held in each year and in some of the more populous counties three or four terms annually. There are two courts of appeal in the State: the St. Louis court of appeals, and the Kansas City court of appeals. The former has jurisdiction over the eastern half and the latter over the western half of the State; one sits at St. Louis and the other at Kansas City, and two terms of each court are held annually. The supreme court sits at Jefferson City and holds two terms in each year. There is a probate court in each county which has jurisdiction of the settlement of estates of deceased persons and the care of minors and persons of unsound mind. Justices of the peace have jurisdiction where the amount in controversy does not exceed $250; in counties and cities having over 50,000 inhabitants, jurisdiction extends to controversies involving $300. Appeals lie from judgments of the probate court and justices of the peace to the circuit court. Appeals lie from the circuit courts to the supreme court in all cases where the amount in dispute exceeds the sum of $2,500; cases involving the construction of the constitution of the United States, or of this State; cases where the validity of a treaty, or statute, or the authority exercised under the statutes of the United States is drawn in question; cases involving the construction of the revenue laws of this State, or the title to any office under this State; cases involving title to real estate; cases where a county or other political subdivision of the State, or any State officer is a party, and in all cases of felony. In all other cases appeals lie to one of the courts of appeal, whose judgments are final in cases where they have jurisdiction.

Depositions. Depositions may be taken on notice served at least three days before the day of taking the depositions, and one day additional for every fifty miles for the first three hundred miles, and beyond that one additional day for each one hundred miles of distance from the place of serving the notice. On application the time may be shortened by the court. If they are to be taken outside of the State a commission issues from the office of the clerk of the court in which the suit was pending. They may be taken within this State by some judge, justice, justice of the peace, notary public, or clerk of any court having a seal, mayor, or chief officer of a city, or town having a seal of office; if taken without this State by some officer appointed by authority of the laws of this State to take depositions, or by some consul or commercial or diplomatic representative of the United States, having a seal, or mayor, or chief officer of any city, town or borough, having a seal of office, or by some judge, justice of the peace, or other judicial officer, or by some notary public within the government where the witness may be found. Depositions may be taken upon written interrogatories, but this is not customary. The names of witnesses to be examined and of the officer before whom the testimony will be taken need not be mentioned in the notice. When notice has been given for the taking of depositions in a suit pending in a city which has a population of more than 50,000 inhabitants, the court will, upon application of the adverse party, appoint a special commissioner to take them. Objections to the competency or relevancy of the testimony need not be noted at the time of taking the depositions, but can be made when the same are offered at the trial.

Descent and Distribution of Property. The real and personal estate of an intestate descends and is distributed as follows: 1. To his children or their descendants in equal parts. 2. If there be no children or their descendants, then to his father, mother, brothers, and sisters, and their descendants in equal parts. 3. If there be no children or their descendants, father, mother, brother or sister, nor their descendants, then to the husband or wife; if there be no husband or wife, then to the grandfather, grandmother, uncles, and aunts, and their descendants in equal parts. 4. If there be no children or their descendants, father, mother, brother, sister, or their descendants, husband or wife, grandfather, grandmother, uncles, aunts, or their descendants, then to the great-grandfathers, great-grandmothers, and their descendants in equal parts, and so on, in other cases without end, passing to the nearest lineal ancestors and their children, and their descendants in equal parts. Posthumous children inherit. When there are collaterals of the half blood, they inherit as much as those of the whole blood. Lineal descendants in equal degree take per capita; but where part of them are dead and part living, the issue of those dead take per stirpes. When a wife shall die without any child or other descendants in being, capable of inheriting, her widower shall be entitled to one-half the real and personal estate belonging to the wife at the time of her death, absolutely, subject to the payment of the wife's debts.

Divorce. When a marriage has been or shall be solemnized between two persons, and either party at the time of the contract of marriage was and still is impotent; or had a wife or husband living at the time of marriage; or has committed adultery since the marriage; or has absented himself or herself without a reasonable cause for the space of one year; or, during said marriage shall have been convicted of felony or infamous crime; or shall have been addicted to habitual drunkenness for the space of one year; or shall be guilty of such cruel or barbarous treatment as to endanger the life of the other; or shall offer such indignities to the other as shall render his or her condition intolerable; or when the husband shall be guilty of such conduct as to constitute him a vagrant within the meaning of the law respecting vagrants; or where, prior to the contract of marriage, or the solemnization thereof, either party shall have been convicted of a felony or infamous crime in any State, territory or country without knowledge on the part of the other party of such fact at the time of such marriage; or where the intended wife at the time of contracting marriage, or at the time of the solemnization thereof, shall have been pregnant by any other man than her intended husband, and without his knowledge at the time of such solemnization—the injured party, for any of the causes above enumerated, may obtain a divorce from the bonds of matrimony. The petition must be accompanied by an affidavit that the facts stated are true, and that the complaint is not made out of levity or by collusion, fear, or restraint between the plaintiff and defendant for the mere purpose of being separated from each other, but in sincerity and truth. Action must be brought in the county where the plaintiff resides, and plaintiff must have resided in the State one whole year next before the filing of the petition, unless the offense complained of was committed within this State, or while one or both of the parties resided in this State. There are statutory provisions regarding alimony. The guilty party forfeits all rights and claims by virtue of the marriage.

Dower. Dower in real estate is as at common law. The widow may convey her dower, although unassigned. If the husband shall die leaving a child or children, the widow is entitled absolutely to a share in the personal estate belonging to the husband at the time of his death, equal to the share of a child of such deceased husband; if he dies without any children living, his widow is entitled to one-half of the real and personal estate belonging to the husband at the time of his death. These provisions are subject to the payment of the husband's debts. In order to succeed to one-half of the real estate the widow must make her election so to do within twelve months after the grant of letters of administration. Where there are children, the widow may also instead of dower, elect to take a child's part in the land of her deceased husband, subject to the payment of debts. She must make her election within fifteen months after the grant of letters. The statute contains adequate provisions for the recovery by the widow of her dower.

Exemptions. The homestead of a housekeeper or head of a family is exempt from attachment and execution; in the country it shall not include more than one hundred and sixty acres of land, or exceed in value $1,500; in cities with a population of 40,000 or more, it shall not include more than eighteen square rods of ground, or exceed in value $3,000; in cities with a population of 10,000 and less than 40,000, it shall not include more than thirty square rods, or exceed in value $1,500; in cities, towns and villages with a population of less than 10,000, it shall not include over ten acres of ground, or exceed in value $1,500. Any sale, mortgage or alienation of the homestead by the husband in which the wife does not join, is null and void.

The following personal property, when owned by the head of a family, is exempt from attachment and execution: 1. Ten head of choice hogs, ten head of choice sheep and the product thereof in wool, yarn or cloth; two cows and calves, two plows, one ax, one hoe, and one set of plow gears, and all necessary farm implements for the use of one man. 2. Two work animals, and feed of the value of $25, for the stock above exempted. 3. The spinning wheels and cards, one loom and apparatus necessary for manufacturing cloth in a private family. 4. All the spun yarn, thread and cloth manufactured for family use. 5. Any quantity of hemp, flax and wool, not exceeding twenty-five pounds each. 6. All wearing apparel of the family, four beds, with usual bedding, and such other household and kitchen furniture, not exceeding the value of $100, as may be necessary for the family, agreeably to an inventory thereof to be returned on oath with the execution by the officer whose duty it may be to levy the same. 7. The necessary tools and implements of trade of any mechanic while carrying on his trade. 8. Any and all arms and military equipments required by law to be kept. 9. All such provisions as may be on hand for family use, not exceeding $100 in value. 10. The Bibles and other books used in a family, lettered gravestones and one pew in a house of worship. 11. All lawyers, physicians, ministers of the gospel and teachers, in the actual prosecution of their calling, shall have the privilege of selecting such books as shall be necessary to their profession, in the place of other property herein allowed, at their option; and doctors of medicine, in lieu of other property exempt from execution, may be allowed to select their medicines. The head of a family, at his election, in lieu of property mentioned in the first and second subdivisions, may select any other property, real or personal, not exceeding in value $300. No property of a defendant other than the head of a family is exempt from execution or attachment, except the wearing apparel of any defendant, and the necessary tools and implements of trade of any mechanic whilst carrying on his trade.

Garnishments. An officer with a writ of attachment or execution in his hands may summon garnishees. A notice is delivered to the garnishee requiring him to appear at the time named to answer under oath such interrogatories as may be filed by the plaintiff in the writ touching his indebtedness to the defendant, or any property belonging to the defendant which may be in his custody or under his control. A garnishee may discharge himself by delivering up the property or paying the debt to the officer under the orders of the court. Provisions exist under which any person claiming property, money, effects, or credits attached in the hands of a garnishee may interplead in the case and assert his right or title to them. No person can be charged as garnishee on account of wages due from him to the defendant in his employ for the last thirty days' service if the employe is the head of a family and a resident of this State. No officer charged with the collection of money prior to the return day of the process in his hands can be summoned as garnishee; nor can any county collector, treasurer, or municipal corporation or officer thereof, or any administrator or executor of an estate prior to order of distribution be summoned as garnishee. The court makes a reasonable allowance to a garnishee for his trouble in answering.

Holidays. The first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, any general State election day, any Thanksgiving Day appointed by the governor of this State or the President of the United States, and the twenty-fifth day of December are public holidays. When any such holiday falls upon Sunday, the Monday next following is considered such holiday. In cities having a population of more than 100,000 inhabitants, every Saturday after 12 o'clock noon is a half holiday.

Interest. When no other rate is agreed upon, 6 per cent per annum is allowed on all moneys after they become due and payable on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all other money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made. Parties may agree in writing for the payment of interest not exceeding 8 per cent per annum. In actions for enforcement of liens upon personal property pledged or mortgaged to secure indebtedness, or in any case where the validity of said lien is drawn in question, proof that a higher rate than 8 per cent was received or exacted renders the mortgage, pledge, or lien invalid. If a defense of usury is sustained in any case, judgment is recovered for the money loaned with 8 per cent interest, and the court order the whole interest set apart for the use of the common schools, and defendant recovers his costs. Parties may contract in writing for interest upon interest, but the interest shall not be compounded oftener than once in a year.

Judgments. Judgments and decrees rendered by a court of record are liens on the real estate of the person against whom they are rendered situate in the county for which the court is held. Transcript of a judgment filed in the office of the clerk of the circuit court of any other county becomes a lien upon real estate in such county. The lien of a judgment continues for three years, and may be revived at any time within ten years from its rendition. Execution may issue at any time within ten years from the rendition of a judgment. When two or more judgments are rendered at the same term as between parties entitled to the judgments, the liens shall commence on the last day of the term at which they are rendered. Judgments bear interest at 6 per cent, but if upon contracts bearing more than 6 per cent, the judgment bears the rate of the contract.

Limitations. Actions must be commenced within ten years: 1. An action upon any writing, whether sealed or unsealed, for the payment of money or property. 2. Actions brought on any covenant of

warranty contained in any deed of conveyance of land shall be brought within ten years next after there shall have been a final decision against the title of the covenanter in such deed, and actions on any covenant of seizin contained in any such deed shall be brought within ten years after the cause of such action shall accrue. 3. Actions for relief, not herein otherwise provided for. Within five years: 1. All actions upon contracts obligations or liabilities, express or implied, except those previously mentioned, and except upon judgments or decrees of a court of record, and except where a different time is herein limited. 2. An action upon a liability created by a statute other than a penalty or forfeiture. 3. An action for trespass on real estate. 4. An action for taking, detaining or injuring any goods or chattels, including actions for the recovery of specific personal property, or for any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated. 5. An action for relief on the ground of fraud, the cause of action in such case to be deemed not to have accrued until the discovery by the aggrieved party, at any time within ten years, of the facts constituting the fraud. Within three years: 1. An action against a sheriff, coroner or other officer, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution or otherwise. 2. An action upon a statute for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the State. Within two years: An action for libel, slander, assault, battery, false imprisonment, or criminal conversation. If at the time the cause of action shall accrue, the person entitled to bring such action be less than twenty-one years of age, or insane, or imprisoned on a criminal charge, or in execution under a sentence of a criminal court for less term than for his natural life, or a married woman, such persons shall be at liberty to bring such actions within the times mentioned after such disability is removed. If, when the cause of action accrues against a person who is a resident of this State, he is absent therefrom, such action may be commenced within the times limited, after the return of such person into the State; and if after such cause of action shall have accrued, such person depart from and reside out of this State, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action. No acknowledgments or promise shall be evidence of a new or continuing contract whereby to take the case out of the operation of the provisions of the statute, unless such acknowledgment or promise is in writing. Every judgment is presumed to be paid after ten years. Actions for the recovery of lands must be brought within ten years. A saving clause excepts infants and married women. Whenever a cause of action has been fully barred by the laws of the State, territory, or country in which it originated, such bar shall be a complete defense to any action thereon brought in this State.

Married Women. A married woman is deemed a *femme sole* so far as to enable her to carry on or transact business on her own account, to contract and be contracted with, to sue and be sued, to enforce or have enforced against her property such judgments as may be rendered for or against her, and may sue or be sued at law or in equity, with or without her husband being joined as a party. Her real estate and personal property can not be taken by any process of law for the debts of her husband. Neither the rents, issues, or products of her real estate, nor the interest of her husband in her right in any real estate, can be levied on for his debts.

Mortgages. The common form of real estate security is a deed of trust, with power of sale in the trustee upon default in the payment of the debt. Sale is at public auction upon twenty or thirty days' public notice as may be provided in the deed of trust. The trustee executes deed to the purchaser at the sale. There is no redemption from the sale unless the holder of the debt is the purchaser; in which case a year is allowed the maker of the deed of trust in which to redeem. He must, however, immediately after the sale, give security to the satisfaction of the circuit court for the payment of the interest to accrue, and all damages and waste which the property may suffer. Transfer of the note secured by the deed of trust carries the security and it is not customary, or necessary, to record an assignment of the security. The trustee receives, as compensation for making the sale, a commission of 2 per cent on the first $1,000, 1 per cent on all sums over that amount and under $50,000, and ½ per cent on all sums over that amount. Recitals in a trustee's deed are made *prima facie* evidence of all the facts therein stated. No foreign corporation, or individual, shall act as trustee in any deed of trust or conveyance whereby any property, real or personal, in this State, is conveyed in trust for any purpose whatever, unless in such conveyance there shall be named, as co-trustee, a Missouri corporation or an individual citizen of this State. No suit shall be brought to foreclose such deed or trust unless a resident trustee shall be a party plaintiff.

Notes and Bills of Exchange. The acceptance of a bill of exchange must be in writing signed by the acceptor. A promise in writing to accept a bill before it is drawn has the effect of an actual acceptance in favor of every person who on the faith thereof shall pay value for the bill. Every person on whom a bill is drawn and to whom the same shall be delivered for acceptance, who shall destroy it or refuse within twenty-four hours to return it, shall be deemed to have accepted it. Bills drawn or negotiated within this State and protested draw 4 per cent damages, if drawn on any person within this State; if on any person out of this State, but within the United States, 10 per cent; if on any person at a place without the United States, 20 per cent. Such damages are only recoverable by the holder of a bill who shall have acquired the same for a valuable consideration. No damages are allowed if the bill be paid within twenty days after demand. Promissory notes are governed by the same rule of damages. Days of grace are as at common law. If the last day of grace falls on a holiday or a Sunday, the paper shall be considered as falling due on the next succeeding day, unless such succeeding day be a holiday or Sunday, in which case it shall be considered as falling due the day previous.

Replevin. If the plaintiff claim in his petition the possession of specific personal property, he may, at the time of filing his petition, or at any time afterward, before the rendition of judgment in the cause, file his affidavit, or the affidavit of some other person in his behalf, showing: 1. That the plaintiff is the owner of the property claimed, sufficiently describing it, or is lawfully entitled to the possession thereof. 2. That it is wrongfully detained by the defendant. 3. The actual value thereof. 4. That the same has not been seized under any process, execution, or attachment against the property of the plaintiff. 5. That plaintiff will be in danger of losing his said property unless it be taken out of the possession of the defendant, or otherwise secured. Upon the filing of the affidavit the court or clerk issues an order requiring the sheriff to take the property and deliver it to the plaintiff. The sheriff requires from the plaintiff a bond with two sureties in double the value of the property stated in the affidavit, for the prosecution of the action with effect and without delay for the return of the property to the defendant, if a return thereof be adjudged, and in default of such delivery for the payment of the assessed value of such property, and for the payment of all damages for the taking and detention thereof, and all costs which may accrue in the action. The defendant may retain possession of the property by giving to the sheriff a bond in double its value for the delivery of the property if possession shall be adjudged to the plaintiff or for the payment of its assessed value and damages. Defendant may not retain possession of the property if the plaintiff shall state in his affidavit that the property was wrongfully taken and that his right of action accrued within one year.

Wills. Every male person twenty-one years of age may, by his last will, devise all of his estate, real, personal, and mixed, and every male over the age of eighteen years may bequeath his personal estate. Women of eighteen years of age and upward, married or unmarried, may devise their real estate and bequeath their personal property. A will must be in writing, signed by the testator or some person by his direction in his presence, and must be attested by two or more competent witnesses subscribing their names to the will in the presence of the testator. If after making the will the testator shall marry and die leaving issue of the marriage living at the time of his death, or born to him after his death, the will shall be deemed revoked. The will of an unmarried woman is revoked by her subsequent marriage. If a child or children, or the descendants of such child or children in the case of death, are not provided for in the will, the testator is deemed to have died intestate. Wills must be presented for probate to the probate court of the county in which was the place of abode of the testator. Wills may be contested within five years after the probate thereof by petition to the circuit court of the county. Real estate in this State may be devised by last will executed and proved according to the laws of this State. Personal estate may be bequeathed according to the laws of the State or country in which the will shall be made.

SYNOPSIS OF THE LAWS OF MONTANA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. CLAYBERG, CORBETT & GUNN, Attorneys at Law, Helena. (*See Card in Attorneys' List.*)

Accounts. An itemized statement of an open or standing account should be sent to the attorney in case suit is to be brought on the same. The original instrument should be sent in case the demand is in writing. The proof of accounts depends upon whether the defendant denies the same or not. Unless the defendant denies the same by a verified answer, the genuineness of the account or the execution of the note or written instrument is deemed admitted. In case of a denial, proof by witnesses or by deposition must be made. The full name of the firm and the full name of each member of the firm, and, if a corporation, the name of the corporation and where organized should always accompany the itemized account when suit is to be brought. In all cases where attachment is desired, refer the attorney to two responsible parties or to some bank in the county who will become proper sureties.

Acknowledgments. (*See Conveyances.*)

Actions. There is but one form of civil actions, which is the same in law as in equity. Actions in the district court are instituted by the filing of a complaint with the clerk and the issuance of a summons; and in justice's courts by the filing of a complaint or a copy of the note, bill, account, or other instrument upon which the action is brought. In cases for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real property, or affecting real property, the action must be commenced in the county where the real estate, or any part thereof, is situated, and generally, in other cases, in the county where the defendants, or any of them, reside at the commencement of the action. If the action is brought in the wrong county, the venue can be changed upon statutory cause being shown. Twenty days are allowed the defendant to answer after service of summons. Publication of summons may be had where property is attached or the action is one in rem. Any person having an interest in the subject-matter of litigation with or against either or both parties may intervene before trial by filing a complaint in intervention. Leave of court must first be obtained and a copy of the complaint served upon all parties or their attorneys. If the action is brought by a non-resident or a foreign corporation, security for costs can be ordered by the court upon a showing by the defendant, and the same must be furnished within thirty days. All further proceedings are stayed until such security is furnished.

Administration of Estates. Letters of administration on the estates of deceased persons dying intestate are issued by the district court in the following order: 1. To the surviving husband or wife, or to some competent person whom he or she may request to have appointed. 2. To the children. 3. To the father or mother. 4. To the brothers. 5. To the sisters. 6. To the grandchildren. 7. To the next of kin entitled to share in the distribution of the estate. 8. To the public administrator. 9. To the creditors. 10. To any person legally competent. A surviving partner must in no instance be appointed administrator of the estate. No person who is not a resident of this State, or who is under the age of majority, shall be appointed administrator. A married woman can be appointed administratrix. When an unmarried woman marries, her authority continues. An administrator must give a bond, the penalty of which must not be less than twice the probable value of the estate. Administrators must render an account within six months after appointment and whenever required by the court or judge. Every executor, or administrator, must give notice to the creditors of the estate, which notice shall be published not less than once a week for four weeks. The time in which claims must be presented is ten months after the first publication of notice to creditors when the estate exceeds in value the sum of $10,000, and four months when it does not. If not presented within time, it is barred forever. If a claim is secured by mortgage, same need not be presented, and on foreclosure of mortgage, which may be had as in ordinary case, no deficiency judgment will be allowed, but if claim is presented against estate a deficiency judgment may be taken. The debts of the estate must be paid in the following order: 1. Funeral expenses. 2. Expenses of last sickness. 3. Debts having preference by the laws of the United States or of the State. 4. Judgments rendered against the decedent in his lifetime and mortgages in the order of their date. 5. All other demands against the estate. Mortgages, pledges, attachments, or judgments have a preference upon the property to which they may attach. Property of decedent is liable to an inheritance tax, if estate be of value of $7,500 or more.

Affidavits. Affidavits taken in other States or Territories of the United States shall be taken before a commissioner appointed by the governor of this State, a notary public, or a judge or clerk of a court of record having a seal; if taken in a foreign country before an ambassador,

minister, consul, or vice-consul, or consular agent of the United States, or before a judge of a foreign court of record having a seal; when taken before a judge of a court in another State or foreign country the genuineness of the judge's signature, the existence of the court, and the fact that the judge is a member thereof, must be certified by the clerk under the seal of the court.

Aliens. Resident aliens may take in all cases by succession as citizens. Non-resident foreigners must appear and claim succession within five years or be barred. Aliens shall not be appointed or elected to office. Aliens may acquire by purchase or otherwise, and hold patented mining property and real estate connected therewith.

Appeals. Appeals lie from the justice's court to the district court, and from the district court to the supreme court. An appeal from the justice's court must be taken within thirty days after the rendition of the judgment, and is taken by filing and serving a notice of appeal and an undertaking on appeal in double the amount of the judgment. The matter in dispute is tried *de novo* in the district court. An appeal from the district court to the supreme court must be taken within one year after judgment, and is taken by filing and serving notice of appeal and an undertaking in the sum of $300, unless stay of execution is required when the undertaking must be double the amount of the judgment; it is taken upon the judgment roll alone. Appeals must be taken within ninety days from a judgment rendered on an appeal from an inferior court. Appeals from orders of the district court from which an appeal lies must be taken within sixty days.

Arbitration. Persons capable of contracting may submit in writing to arbitration any controversy which might be the subject of a civil action except questions of title to real property. A submission may be entered as an order of the district court and the award filed with the clerk where it may have the effect of a judgment. The court has power to vacate the award and order a new hearing or not at its discretion. The court may also modify or correct the award.

Arrest. Arrest in civil cases may be had in all cases of fraud, or where the action is for willful injury to person, or character, or property, if the property belongs to another; also in an action for a fine, or penalty for money or property embezzled, or fraudulently misapplied or converted by a public officer, or officers of a corporation, or by an attorney, or other agent, or one acting in a fiduciary capacity; also in case where the defendant is about to depart from the State, or has removed, or disposed of his property, or is about to do so with intent to defraud his creditors. Before the order of arrest is so issued a proper affidavit must be filed, together with an undertaking in at least the sum of $500, with two sufficient sureties. The defendant may be discharged upon giving bail or depositing the amount of the claim.

Assignments and Insolvency. An insolvent debtor (a person unable to pay his debts from his own means as they become due) may execute in writing an assignment for the benefit of creditors. The wages of the employes, earned within sixty days and not exceeding $300 to each person, are preferred claims. All preferences must be absolute. Joint creditors are paid out of joint property, individual creditors out of separate property. An assignment is void against a creditor not assenting thereto if it give a conditional preference, if it tends to coerce a creditor to release or compromise his demand, if it provides for false or fraudulent claims or for more than is due on a claim, if it reserve any interest in assigned property to the assignor before the payment of his debts, if it give the assignee power to delay the conversion of the property to the uses of the trust, if it exempts the assignee from liability for misconduct. The assignment must be accompanied by the affidavit of the assignor and assignee that the same is made in good faith, without any design to hinder, delay, or defraud creditors, and the assent of the assignee must accompany the assignment. It must be acknowledged or proved and certified and recorded the same as a conveyance of real property. One partner has no power to make an assignment, unless his co-partners have abandoned the business to him or are incapable of acting. The assignor must, within twenty days, file an inventory with the county clerk of the county in which the assignor resided at date of assignment, giving the names of all the creditors, their place of residence, amount due and owing each, nature of claim, consideration therefor, mortgages, judgments, etc., and what property exempt and what not exempt. Assignments must be recorded within twenty days after date of the assignment. The assignee must give bond, and may be removed upon application of one or more creditors showing incompetency. After six months from date of assignment assignee may be required, on petition of any creditor, to account before district court. The assignee must account within six months. Partial assignments allowed.

Attachments. At the time of the issuance of the summons or at any time thereafter the plaintiff may have all the property of the defendant attached not exempt from execution. Attachments issue upon the filing of an affidavit showing that the defendant is indebted to the plaintiff upon a contract, express or implied, for the payment of money or other property then due, not secured by a mortgage, lien, or other pledge of real or personal property, or if originally so secured that the security has become valueless without the act of plaintiff, or the person to whom the security was given, and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant. Before any attachment is issued the plaintiff is required to give an undertaking with two or more sureties in a sum not less than double the amount claimed by the plaintiff, if such amount be $1,000 or under, or if in excess of $1,000, then in a sum equal to such amount, but an undertaking shall in no case exceed $10,000. Debts due the defendant and property in possession or under control of third party may be garnished. Public officers can not be garnished. Attachments are satisfied according to their priority. Property covered by chattel mortgage can only be attached by first satisfying chattel mortgage. An attachment may be procured upon any debt for the payment of money or specific property before the same shall have become due when it shall appear by the affidavit in addition to the above requirements: First, that the defendant is leaving, or is about to leave the State, taking with him property, moneys, or other effects, which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or, second, that the defendant is disposing of his property, subject to execution, for the purpose of defrauding his creditors. In such case the judgment recovered shall be with rebatement of interest from date of judgment until maturity of debt; and defendant may by plea put in issue matter alleged in affidavit required, and if plaintiff fails to substantiate some one of the causes required to be alleged in the affidavit, the suit for debt or debts not due shall abate.

Banks. Any number of persons, not less than three, nor more than thirteen, may associate together to establish a bank of discount and deposit and become incorporated upon the terms and conditions prescribed by statute. The capital stock shall not be less than $20,000. It must be paid into the treasury in cash, and a certificate to that effect under the oath of the president and cashier filed in the office of the State auditor and in the office of the county clerk where the bank is located. The bank shall be authorized by certificate under the hand and official seal of the State auditor to commence banking business. Such authorization and certificate of incorporation shall be published at least four times in a newspaper in the town where the bank is located. Such bank has the power to buy and sell bonds or stock of the United States, and any State or Territory; also the bonds of any county, city, or school district in this State; but it can not purchase its own stock or the capital stock of an incorporated company, unless such purchase shall be necessary to prevent loss upon a debt; such stock can be held no longer than six months if it can be sold at cost price or at par. Bank is given lien on stock for indebtedness of holder, and no transfer can be made until lien discharged except by consent of a majority of directors. The usual powers of receiving deposits and loaning money are given by statute. Banks may hold such real estate only as is necessary for the transaction of its business, and such as it may acquire in the enforcement and collection of its debts. Every conveyance of real estate must be authorized by the board of directors. Dividends must be declared from the net earnings on the first Monday in January and July, or oftener, but a full statement of the bank's condition on the day after declaring such dividend must be made to the State auditor. Neglect to transmit this statement for one month renders the directors personally liable for all debts of the corporation contracted previous to and during the period of such neglect. Officers and stockholders are individually liable for all debts, equally and ratably, to the extent of their stock. This liability ceases six months after the sale of their stock. Banks must keep a book, accessible to stockholders, containing a list of stockholders and the number of shares held by each. Banks must also post in a conspicuous place a notice, signed by the president and secretary, giving the names of the directors and the number and value of shares held by each. Every director must own at least ten shares. Directors must be citizens of the United States and three-fourths of them residents of the State. A refusal or neglect for sixty days to comply with the requirements of the statute works a forfeiture of its franchise. The limit of liability by any person, firm, or corporation to a bank shall not exceed 15 per cent of the capital stock. A bank must keep 20 per cent of immediate liabilities in available funds. Bank stock is taxable, whether held in this State or not. Any number of persons, not less than three, may associate together to form a corporation for trust, deposit, security and loaning business. The capital stock must be at least $100,000 and no more than $500,000, the shares to be of the par value of $100 each; can not do business until $100,000 is subscribed for and paid in cash; the requirements, powers, and duties are more enlarged but are similar to those prescribed for banking associations; may accept and execute any trust for any lawful purpose. Any number of persons, not less than three, may associate together to form a savings bank. No savings bank must have a capital stock of less than $100,000, but such bank may organize on a basis not exceeding $500,000 capital stock. The requirements of savings banks are the same as banks of discount and deposit, except that savings banks must make full reports, under oath, of their condition to the State auditor on the first Mondays of January, April, July, and October, and at such other times when the auditor may call for it.

Chattel Mortgages and Deeds of Trust. Any interest in personal property capable of delivery may be mortgaged. A mortgage of personal property is void against creditors of mortgagor, and subsequent purchasers and incumbrancers of the property in good faith, unless the possession of the mortgage property be delivered to and retained by the mortgagee, or unless the mortgage provides that the property may remain in the possession of the mortgagor and be accompanied by an affidavit of all the parties thereto, or, in case any party is absent, an affidavit of those present and of the agent or attorney in fact of such absent party, that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay, or defraud the creditors of the mortgagor, and be duly acknowledged and filed in the office of the county clerk and recorder of the county where the mortgagor resides, or if a non-resident in the county where the mortgaged property is situate. The validity of a chattel mortgage continues until the maturity of the debt and sixty days thereafter. The entire period of time must not exceed one year and sixty days unless the chattel mortgage is renewed at or before the maturity of the debt or obligation, or any part thereof, by filing an affidavit showing the date of the mortgage, the names of the mortgagor and mortgagee, date of filing the same, amount of the debt and amount due at the time of filing the affidavit, the time to which extended, which should not exceed one year, and that the debt was neither made, nor renewed, nor extended to hinder, delay, or defraud the creditors, or subsequent incumbrancers of the mortgagor. This affidavit must be filed where the chattel mortgage is filed. Any subsequent mortgagee may pay the amount of the prior chattel mortgage and be subrogated to all the rights of the prior mortgagee. Chattel mortgages may be foreclosed by an action in the district court, or without action if mortgage so provides. A chattel mortgage is discharged by the acknowledgment of satisfaction signed by the mortgagee and filed as aforesaid. Deeds of trust of real and personal property executed by an incorporated company are governed by the law relating to mortgages of real property, but the corporation may retain possession of the mortgaged property, provided the mortgage or deed of trust is accompanied by an affidavit of the president, or secretary, or managing agent of the corporation in the same form as provided for chattel mortgages.

Conveyances, Deeds, Acknowledgments, etc. Every conveyance in writing of or affecting real estate must be acknowledged, or proved, and certified. If acknowledged in the State the acknowledgment may be taken before a justice or clerk of the supreme court, judge of the district court, clerk of a court of record, county clerk, notary public, or justice of the peace; without the State, but within the United States, by some justice or clerk of any court of record of the United States or of any court of record of any State or Territory, a notary public, any officer of a State authorized by the laws of that State to take acknowledgments, or a commissioner appointed by the governor of the State for that purpose; without the United States, by a notary public or a United States minister, commissioner, charge d'affaires, consul, vice-consul, consular agent, judge of a court of record, or commissioner appointed by the governor under special statutes. If a deed be executed by a corporation the certificate should state that the officer executing the same was personally known as such and that the corporation executed the same. Any married man, whose wife has never resided in this State or Territory, can by deed or mortgage convey full title to property by his signature.

Certificates of acknowledgment must be in the following form:

STATE OF..... } ss.
County of..... }

On this the ...day of....., in the year....., before me (here insert name and quality of officer) personally appeared..... ..... known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

Corporations. Three or more persons may incorporate a company by making, signing, and delivering a certificate giving the name of the company, its object, capital stock, number of shares, and by whom; if the stock is assessable it must be so stated; term of existence, not exceeding forty years, the locality where the business is to be carried on,

and the names of the trustees for the first three months, which shall not be less than three nor more than thirteen. The certificate must be filed with the clerk of the county where the business is to be done and a certified copy thereof with the secretary of State. Corporations organized outside this State are deemed to be foreign corporations. Such corporations are required to file with secretary of State and with the county clerk of the county where they desire to do business, an authentic copy of their certificate of incorporation and a verified statement of assets, liabilities, etc. There shall also be filed a consent to be sued in the courts of this State, designating a resident agent upon whom process may be served. A failure to do this renders the contracts of such foreign corporations void and uninforceable; such corporations must file verified statements semi-annually.

Courts. There are three courts comprising the judiciary of the State, being the supreme court, the district court, and justice court. The supreme court has appellate jurisdiction in civil cases and in all criminal cases tried in district courts. It meets in Helena the first Tuesday in March, June, October, and December. The district court has original jurisdiction in all cases (civil) where the amount in dispute or value of property sued for exceeds $50, but may enter judgment in cases where the amount in dispute is less than $50 upon plaintiff's paying costs. It also has appellate jurisdiction from the justices' court. In districts composing only one county the court is in continuous session; more than one county, there are four terms of court a year in each county. The justice court has jurisdiction where the amount in dispute does not exceed $300, not affecting the title of real estate. It is open at all times.

Days of Grace. Days of grace are not allowed.

Depositions. Depositions may be taken of witnesses out of this State any time after service of summons by giving the adverse party, or his attorney, five days' notice accompanied with interrogatories and suing out a commission directed to a notary public or other competent officer, requiring him to take the deposition at such time and place as he may designate and appoint upon the interrogatories forwarded, and to duly certify the same when taken to the clerk of the court issuing the commission. Depositions of witnesses in the State are taken without commission by giving notice, upon oral examination. If issued to any foreign country it may be directed to a minister, ambassador, consul, vice-consul, consular agent of the United States in such country, or to any person agreed upon by the parties. Depositions of witnesses within the State may be taken for the purpose of perpetuating testimony.

Descent and Distribution of Property. Property of an intestate is distributed, subject to the payment of his debts, in the following manner: 1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife, and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and to the issue of the deceased child or children by right of representation. 2. If the decedent leave no issue then the estate goes in equal shares to the surviving husband or wife, and to the decedent's father and mother in equal shares, and if either be dead the whole of said half goes to the other. If there be no father or mother, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation. If the decedent leave no issue, nor husband or wife, the estate must go to the father and mother in equal shares, and if either be dead then to the other. 3. If there be no issue, nor husband, nor wife, nor father or mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. 4. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother or sister, the whole goes to the surviving husband or wife. 5. If the decedent leave no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming through an ancestor more remote. 6. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation. 7. If, at the death of such child who dies under age, not having been married, all the other children of his parents, are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children from the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation. 8. If the decedent leave no husband, wife or kindred, the estate escheats to the State.

Divorce. The following are statutory grounds for divorce: 1. Adultery. 2. Extreme cruelty. 3. Willful desertion. 4. Willful neglect. 5. Habitual intemperance. 6. Conviction of felony. No divorce is allowed in any wise to affect the legitimacy of the children of the marriage, except in cases for adultery of the wife. The legitimacy of children begotten after the commission of adultery is decided by the court. The party seeking the divorce must have resided in the State one year previous to the filing of the bill of complaint. Willful desertion, willful neglect, or habitual intemperance must continue for the space of one year before there is ground for divorce. Divorce must be denied upon showing connivance, or collusion, or condonation, or recrimination. Alimony may be granted by the court.

Dower. A widow is entitled to a one-third interest as her dower in all lands whereof her husband was seized of an estate of inheritance, during marriage, unless relinquished. A widow's dower may be barred by a devise or bequest, unless she elect, within one year after the probate of the will, to take her dower. If the husband leave a widow but no children, the widow may elect to take, in her own right, one-half of all the real estate after the payment of debts, but such election must be made within two months after being notified of the payment of debts. A widow has no dower in unpatented mining claims.

Executions. Executions may issue to any sheriff in the State, and at the same time to different counties, and are returnable in not less than ten days nor more than sixty days. Personal property is levied on first, and if insufficient to satisfy execution, then upon real property. Sale of personal property is made by giving not less than five nor more than ten days' notice, sale of real property by giving twenty days' notice. There is no stay law, but the courts will grant a stay of execution for a reasonable time. If bond is given on an appeal the execution is stayed pending the appeal. Executions may be issued at any time within six years after entry of judgment, and thereafter by leave of court on motion.

Exemptions. Exemptions are as follows: All clothing of the debtor and family, and chairs, tables, desks, and books to the value of $200. Also all necessary household, table and kitchen furniture which includes every article of use for the comfort of the debtor or his family, and provisions and fuel actually provided for individual or family use sufficient for three months. Also one sewing machine, one horse, saddle and bridle, two cows and their calves, four hogs, and fifty domestic fowls, and feed for such animals for three months; also one clock and all family pictures. To a farmer there is exempt in addition to the above his farming utensils not exceeding $600 in value, two oxen, or two horses or mules and their harness; one cart or wagon, and food for such stock for three months; also $200 worth of seed provided for the purpose of sowing or planting, at any time within six months. The proper tools, instruments, office furniture and books of any mechanic, physician, dentist, lawyer, or clergyman. To a miner, his dwelling and all his tools and machinery for carrying on his avocation not exceeding the value of $1,000; also one horse or mule, and feed for the same for three months when such horse or mule is used in working the mine; and one horse and vehicle and harness of a physician or clergyman used in making professional visits, with feed for three months. The wages of a debtor earned within thirty days preceding the levy is exempt, provided it is necessary for the use of his family residing in the State, supported wholly or in part by his labor. All moneys, benefits, and privileges accruing or growing out of life insurance on life of debtor, if annual premium does not exceed $500. None but bona fide residents can claim the benefits of this law. A homestead not to exceed in value the sum of $2,500; if agricultural land, not to exceed 160 acres; if within the limits of town or city, not to exceed one-fourth of an acre. No exemption as against judgment recovered for price of article, or upon judgment for foreclosure of mortgage lien.

Fraud. (*See Arrest and Limitations.*)

Holidays. Holidays are Sunday, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day (first Monday in September), Thanksgiving Day, Christmas Day, and general election day.

Husband and Wife. (*See Married Women.*)

Interest. Parties may stipulate for any rate of interest. The legal rate is 8 per cent per annum. Where no contract is made as to interest the legal rate governs after the debt is due. There is no usury law. Where a person is entitled to recover damages certain on a certain date, he may recover interest from such date.

Judgments. From the time the judgment is docketed in the district court it becomes a lien upon all the real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he afterwards acquires. A certified transcript of the judgment docket, filed in another county, creates a similar lien. The lien expires in six years after the docketing of the judgment. Judgments may be entered in the district court by the clerk on default when no answer is filed, as soon as time for appearance has expired, when action is on contract for the recovery of money or damages only. Execution may issue as soon as judgment is entered on docket.

Liens. All workmen and laborers are given a lien by statute to secure the payment of the work and labor done, or material furnished. This lien must be claimed within ninety days by filing an account with the clerk and recorder of the county where the property is situated. A suit must be brought to enforce this lien within twelve months after the filing of the same.

Limitations. An action upon a judgment must be commenced within ten years; actions upon contracts or obligations founded upon any instrument in writing, within eight years; actions to establish a will, actions upon judgments of a court not of record, five years; actions against a sheriff or other officer in his official capacity, actions upon an account, contract, promise, obligation, or liability not founded on an instrument in writing, actions to recover damages for the death of one caused by the wrongful act or neglect of another, within three years. If the action is upon a running or open account the computation of time shall be from the date of the last item thereof. Actions for a penalty or forfeiture under the statute given to an individual or to an individual and the State, actions upon a statute or upon an undertaking in a criminal action for a forfeiture or penalty to the State, actions for libel, slander, assault, battery, false imprisonment or seduction, actions for waste or trespass on real property, actions upon a liability created by statute other than a penalty or forfeiture, an action for taking, detaining, or injuring any goods or chattels, including actions for specific recovery of personal property, actions for relief on the ground of fraud or mistake (the cause of action not to accrue until the discovery of such fraud or mistake), within two years; actions against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process, an action against a municipal corporation for damages or injuries to property caused by a mob or riot, or by a municipal corporation for the violation of any city or town ordinance, actions against an officer or officer *de facto* to recover for goods, wares, and merchandise, or the value thereof, or for damages done to person or property, actions for killing or injuring stock by a railroad corporation or company, within one year; to recover stock sold for a delinquent assessment, actions on claims against a county, within six months. Actions for relief not provided for, within five years. There is no limitation for the recovery of money or other property deposited with any bank, banker, trust company, or savings and loan society. Actions for the recovery of real property must be commenced within ten years. A cause of action arising in any other State or Territory, barred by the laws thereof, cannot be maintained in this State.

Married Women. A married woman may sue and be sued, make contracts, and do all other acts as if she were a *femme sole*. She may convey her separate real estate without her husband joining with her. She may become a sole trader and carry on business in her own name by publishing in a newspaper a notice of intention to apply for an order of the district court granting such right. The creditors of the husband may oppose the application on grounds of attempt to defraud such creditors. An oath and a certified copy of the order of the court must be recorded with the county clerk and recorder. A sole trader's property is not liable for her husband's debts. A wife's separate property is not liable for the husband's debts. She is responsible for the maintenance of her children. The husband is not liable for any of the debts of his wife as sole trader. The husband can not superintend or manage the business. Females become of age at eighteen years.

Mortgages. Mortgages of real property must be executed, acknowledged, and recorded the same as deeds. Mortgages given upon mining property by a corporation must be authorized by a stockholders' meeting called in accordance with the codes. Mortgages held by residents are subject to taxation, but mortgages held by non-residents are not. They

are not deemed a conveyance and must be foreclosed by an action in the district court. Twelve months after sale is allowed for redemption; only six months, however, as to mortgages executed prior to July 1, 1895. The mortgage of a homestead by a married man is void unless the wife join in the execution. Mortgages are discharged by entry on the record or by separate instrument acknowledged and recorded. A penalty of $100 besides actual damages is allowed for failure to enter satisfaction one week after request.

Notes and Bills of Exchange. There are six classes of negotiable instruments viz.: bills of exchange, promissory notes, bank notes, checks, bonds, and certificates of deposits. Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future. A negotiable instrument may contain a pledge of collateral security with authority to dispose thereof; also a provision for reasonable attorney fee, or both. The signature of every drawer, acceptor, and indorser of a negotiable instrument is presumed to have been made for a valuable consideration. It is not necessary to make demand on the principal debtor to charge him, unless the instrument is payable at a specified place and if so the instrument must be presented by the holder thereof to the principal debtor at such place. The apparent maturity of a demand or sight bill of exchange is one year from its date if it bear interest; if it does not bear interest, ten days from its date in addition to the time of transmission. The apparent maturity of a demand or sight note is one year if it bear interest, and six months if it does not bear interest. If a sight or demand bill of exchange without interest is not presented for payment within ten days the drawer and indorsers are exonerated unless such presentment is excused. If a sight or demand note without interest is not duly presented for payment within six months after its date the indorsers thereon are exonerated unless such presentation is excused. Days of grace are not allowed. Acceptance must be in writing by the drawee, or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill with or without other words. The drawee may postpone his acceptance or refusal until the next day after presentment.

Powers of Attorney. Every power of attorney affecting real estate shall be acknowledged, or proved and certified, and filed and recorded with the county clerk and recorder of the county where the real estate is situated. A power of attorney shall not be deemed to be revoked until an instrument, containing such revocation, properly acknowledged, shall be recorded in the same office in which the power of attorney was recorded.

Probate Law. (*See Administration of Estates, Descent and Distribution of Property.*)

Protest. Notice of the dishonor of a foreign bill of exchange can be given only by a notice of protest. Protest must be made by a notary public if with reasonable diligence one can be obtained, and if not, by any reputable person in the presence of two witnesses. Protest is made by giving a written notice setting forth a copy of the original bill of exchange, stating presentment and manner in which made, the refusal or nability of the drawee to pay, and the reason assigned, and protesting against all the parties to be charged; such notice must be deposited in the nearest post office directed to each of the parties to be charged, and the postage must be paid thereon. Protest must be made in the city where the bill is presented for acceptance or payment. Damages are allowed to holders for value upon protest.

Replevin. The plaintiff in an action to recover possession of personal property may replevy the same at the time of issuing summons or at any time before answer, upon making affidavit showing that the plaintiff is the owner of the property or entitled to possession thereof; that it is wrongfully detained, and has not been taken for a tax, assessment or fine pursuant to a statute or seized under an attachment or an execution against the plaintiff; or if so seized that it is exempt; and also stating the actual value of the property. A demand for the delivery of the property should be indorsed upon the affidavit and an undertaking in double the value of the property must be given. The defendant has two days in which to except to plaintiff's sureties, or he may require the return of the property by giving an undertaking in double the value of the property. If such undertaking is not given within five days from the replevy the property must be turned over to the plaintiff.

Suits. (*See Actions.*)

Taxes. All kinds of property, except public property and property for beneficent purposes, are subject to tax for public purposes only. Such taxes are a lien upon the property, which lien has the effect of an execution levied on all such as are delinquent after the first day of December, after which a penalty of 10 per cent is added. The delinquent tax list is published in some newspaper on or before the last Monday of each year, and in not less than twenty-one and not more than twenty-eight days after the first publication sale of the real estate is made, subject to redemption within thirty-six months from date of sale. The purchase money draws interest at one per cent a month from the date of sale. The purchaser is entitled to a tax deed at the end of the thirty-six months but must give thirty days' notice to the owner or occupant of the property. Taxes are assessed to the party in whose name the property stands of record on the first Monday in March of each year. An inheritance tax of $5 for every $100 worth of property must be paid by anyone, not a blood relation, inheriting such property; and blood relations and adopted children pay a tax of $1 for $100 worth of property inherited. Estates under $7,500 not liable for inheritance tax.

Wills. Every person over eighteen years of age and of sound mind may dispose of all his estate, real and personal, by will. All wills, except nuncupative, must be in writing. And all wills, except nuncupative and holographic, must be executed and attested as follows: 1. Must be subscribed by the testator himself, or some one in his presence and by his direction, must subscribe his name thereto. 2. The testator's signature must be made in the presence of the attesting witnesses or acknowledged to have been made by him or by his authority. 3. The testator must declare to the attesting witnesses that the instrument is his will. 4. There must be two attesting witnesses who must sign the will at the testator's request, in his presence. An holographic will is one entirely written by the testator himself and subject to no form. The estate bequeathed by a nuncupative will must not exceed $1,000 in value, must be proved by two witnesses, must have been made in actual contemplation, fear, or peril of death, and must be proved within six months after stating the testamentary words unless the substance thereof was reduced to writing within thirty days after they were spoken. A will executed according to law of the State where the testator was then domiciled may be probated in this State.

SYNOPSIS OF THE LAWS OF NEBRASKA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. McGilton & Herring, Attorneys at Law, Omaha. (*See Card in Attorneys' List.*)

Accounts. A running account draws interest at the rate of 7 per cent per annum, beginning six months from the date on which the last item becomes due. In action thereon it must be proved by oral testimony or deposition. A sworn account is not admissible as evidence.

Acknowledgments (*see Deeds*) may be made in this State before a notary, clerk of any court, justice of the peace, county clerk, register of deeds, secretary of State, under seal, if the officer have one. If acknowledgment taken in any other State or Territory, it must be in accordance with the laws of this State or of the State or Territory where taken, before an authorized officer or a commissioner of deeds appointed by the Governor of this State for that purpose. If the officer have no seal, then the acknowledgment must have attached thereto a certificate of the clerk of a court of record, or other proper certifying officer of the district or State where taken, under the seal of his office, showing that the person taking the acknowledgment was, at the date thereof, such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the said signature of the officer to be genuine, and that the deed or other instrument is acknowledged in accordance with the laws of such State, district, or Territory. If acknowledgment taken in a foreign country, it may be acknowledged before any notary public, minister plenipotentiary, extraordinary or resident, charge des affaires, commissioner, commercial agent, or counsel of the United States. In executing acknowledgment, notaries public must write in the date when their commission expires or else said date must be imprinted on their seals.

Actions. Only one form of action, as distinctions between actions at law and suits in equity, abolished by statute. Must be prosecuted in name of real party in interest, except that an executor, administrator, guardian, trustee of an express trust, a person with whom or in whose name a contract is made for the benefit of another, or a person expressly authorized by statute, may prosecute an action without joining with him the person for whose benefit it is prosecuted. Action by an infant must be prosecuted by a guardian or next friend, and an infant's defense is made by guardian *ad litem*. Plaintiff has option to sue all or any of those severally liable on same instrument. In case of death or other disability the action continues by or against the representative or successor in interest, and in case of a transfer of the interest in the action the same may be continued in the name of the original party, or the successor may be substituted. Additional parties may come into an action voluntarily, or may be brought in by order of court. Actions to recover damages to realty and for the recovery or partition of realty, or for the sale of same under foreclosure proceedings, must be brought in the county where the realty is situated, and if it be situated in two or more counties the action may be brought in any one county, except it be for the recovery of separate tracts in different counties, when separate actions must be brought in each county. Actions to compel the specific performance of a contract of sale may be brought in the county where the defendants or any of them reside. The jurisdiction of justice courts does not exceed $200, and of county courts $1,000. District courts have general jurisdiction, but if suit brought therein and the justice court would have had jurisdiction, then the plaintiff can not recover costs. Actions are commenced by filing bill of particulars or petition, upon which summons issues, and is served personally upon defendant to give court jurisdiction to enter personal judgment. In certain actions, affecting property within the jurisdiction of the court, defendant, if he be a non-resident, may be served by advertisement in some newspaper. Act creating municipal court declared unconstitutional in October, 1897.

Administration of Estates. (*See Decedents.*) County courts have exclusive jurisdiction over estates. Administration is granted to widow or next of kin, or both, or some one selected by them; but if unsuitable, or if they fail for thirty days after death of a party to apply for letters, same may be issued to a creditor, or to some one selected by the judge. Executors and administrators must give bond, as required by the court, and must, within three months after appointment, make report of all property belonging to deceased. General letters of administration are only issued after due notice to parties interested, and if case is urgent a special administrator may be appointed, who shall name report within two weeks. Personalty is disposed of under direction of the county court, but to sell real estate, license must be obtained from the district court. Debts of decedent are a lien upon all real estate.

Affidavits. (*See Depositions.*) Affidavits may be made before anyone authorized to take depositions, and must be subscribed in presence of, the officer and sworn to before him, and this fact must be stated in the affidavit. If made out of State and the officer has no seal, affidavit must have attached thereto a certificate of clerk of a court of record reciting authority of such officer.

Aliens. Non-resident aliens and foreign corporations may not own or hold real estate in Nebraska, but the widows and heirs of such aliens who held lands prior to March 16, 1889, have ten years to dispose of their interests, and those who acquired their ownership prior to that date may dispose of same during their life. If not so disposed of, the lands escheat to the State. However, non-resident aliens may acquire a lien upon real estate, and, pursuant or subsequent to such, may purchase such real estate, but shall dispose of same within ten years from time of acquiring title. These provisions do not apply to railroads nor to real estate upon which buildings are erected and maintained for manufacturing purposes, nor to that within the corporate limits of cities and towns. Aliens who declare their intention to become citizens of the United States thirty days before an election, conformably to the laws of the United States on subject of naturalization, are electors, same as citizens.

Appeals are allowed from justice and county courts to the district court. Bond must be given for double the judgment and costs, but in no event less than $50, and in actions for possession of property the bond is conditioned to pay a reasonable rent and the costs. Bonds must be filed within ten days and a transcript filed in the district court within thirty days from the judgment, but in probate matters thirty days are allowed in which to file bonds in the county court in a sum fixed by the judge, conditioned to prosecute the appeal without delay and pay all debts, damages and costs that may be adjudged against the appellant, and ten days thereafter such appellant must file a transcript in the district court. An executor, administrator, guardian or guardian *ad litem* appealing is not, however, required to give a bond. Parties may appeal from the district court to the supreme court, or may

proceed by petition in error, in both cases filing a bond if stay of proceedings is desired. In appeal cases twenty days are allowed in which to file such bonds and six months in which to perfect the appeal; and in cases prosecuted by error proceedings parties have one year within which to perfect same.

Arbitration. Instead of submitting a controversy to a court, parties may agree in writing to arbitrators, whose decision, after confirmation by the court, shall stand as a judgment; but this procedure is seldom or never followed.

Assignments. *(See Exemptions, Acknowledgments.)* Every assignment for benefit of creditors shall be made to the sheriff of the county, and shall include all property of the assignor, except such as may be exempt. Assignments shall be executed and acknowledged the same as a deed to real estate, and within twenty four hours after its execution shall be filed for record in the county clerk's office, and if real estate is mentioned therein, it shall also be recorded in the register of deeds office, and within thirty days it shall be recorded in any other county where property conveyed be situated. The county court has jurisdiction of assigned estates, and within ten days after the assignment the assignor must file in such court a full inventory, under oath, showing the names of creditors, their places of residence, amounts due each, the nature of the debt, the security held by creditors, and a full list of all property owned at the date of the assignment. Immediately thereafter the county judge must fix a day for meeting of creditors to select an assignee to succeed the sheriff, and must advertise the same in some newspaper, as well as send notice to each creditor named by the assignor. After appointment of permanent assignee, the county judge must fix the time within which creditors shall file claims, which claims may be contested in the usual way, and upon their allowance or disallowance, appeals may be prosecuted therefrom to the district court, and thence to the supreme court. The assignee must sell the property with due diligence, and the county court shall declare a dividend when there are sufficient funds for that purpose, but payments shall be made in the following order: First, all fees and allowances of the assignee and court and court officers; second, all taxes and assessments against the property assigned; third, laborers' wages, if they have been preferred; fourth, amounts due general creditors. A creditor may file and prove a claim and concurrent therewith, may pursue a separate remedy against the assignors for the collection of such claim. Conveyances, preferences, payments, pledges or transfers of property made by an insolvent debtor in contemplation of such insolvency, within thirty days prior to making an assignment, are void, except that the assignor may pay or secure clerks or servants' wages, not exceeding $100 to any one person, and may pay or secure any debt created within nine months prior to that time and may secure any debt contracted simultaneously with the giving of such security.

Attachments. The plaintiff at the commencement of an action may have an attachment against the defendant's property, when the amount is due, by filing an affidavit showing any of the following grounds: 1. That the defendant is a foreign corporation or non-resident of the State. 2. Has absconded with intent to defraud creditors. 3. Has left the country or his residence to avoid the service of summons. 4. So conceals himself that a summons can not be served upon him. 5. Is about to remove his property, or a part thereof, out of the jurisdiction of the court with the intent to defraud his creditors. 6. Is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors. 7. Has property or rights in action which he conceals. 8. Has assigned, removed, or disposed of, or is about to dispose of his property, or a part thereof, with intent to defraud his creditors. 9. Fraudulently contracted the debt, or incurred the obligation for which suit is brought. The affidavit must further show the nature of plaintiff's claim, that it is just and the amount which affiant believes plaintiff ought to recover. No undertaking is required where the defendant is a foreign corporation, or is a non-resident of the State. In all other cases plaintiff must give an undertaking in double the amount of his claim. If property can not be seized by the officer it may be reached by garnishment process. Writs may issue to other counties than that where suit be commenced. Defendant may give a re-delivery bond and retain possession of the property attached. An attachment writ may be had in actions upon claims before they are due when affidavit filed showing any one of the following grounds: 1. That defendant has sold, conveyed, or otherwise disposed of his property with a fraudulent intent to cheat and defraud his creditors, or to hinder and delay them in the collection of their debts. 2. That he is about to make such sale, conveyance, or disposition of his property with such fraudulent intent. 3. That he is about to remove his property, or a material part thereof, with the intent or to the effect of cheating and defrauding his creditors, or to hinder and delay them in the collection of their debts. In such cases, however, order for the attachment must be granted by a judge and the affidavit must show when the amount will be due and bond must be given. It is usual for the defendant to deny, by affidavit, the allegations in plaintiff's affidavit relative to the grounds for an attachment. Then affidavits and depositions are procured by both parties to sustain or refute the allegations, and the question as to whether the attachment shall stand or be dissolved is then submitted to the court alone, who decides the matter as a question of fact upon the evidence adduced. If the attachment be sustained, the property, unless perishable, is held until final judgment be had in the action, and if the attachment be dissolved, the plaintiff may at once appeal therefrom to the supreme court, and by giving a bond, can hold the attached property in *statu quo*.

Banking. Any corporation, partnership, or individual may transact a banking business by first obtaining permission from the State banking board, composed of the auditor of public accounts, the State treasurer, and the attorney-general, which board has supervision and control of all banking institutions in the State, and shall appoint examiners, whose duty it is to carefully investigate the affairs of each bank at least once a year. Savings banks shall have at least $12,000 capital and other banks shall have a capital as follows: In communities having less than 1,000 inhabitants capital shall be at least $5,000; more than 1,000 and less than 1,500 inhabitants, $10,000; between 1,500 and 2,000, $15 000; between 2,000 and 3,000, $20,000; between 3,000 and 5,000, $25,000; between 5,000 and 10,000, $30,000; more than 10,000, $50,000. Such capital shall be in money, commercial paper, bank furniture, and the bank building and ground on which situated, which ground shall be unincumbered, but in no case shall the bank building and ground, together with furniture and fixtures, exceed in value one-third of the paid-up capital, and the furniture and fixtures alone shall not exceed in value 10 per cent of the paid-up capital. Before commencing business the bank shall make a detailed statement of the proposed business to the banking board, which, after approval, shall issue a charter. Every bank must make at least quarterly detailed reports under oath, showing the amount loaned upon bonds and mortgages, amount loaned upon notes, bills of exchange, overdrafts, and other securities, with the actual market value thereof, the amount of rediscounts and of commercial paper past due, the amount invested in real estate, at cost, the amount of cash on hand and on deposit in banks or trust companies, with their names and the amount deposited in each, and the amount of all other assets, together with such other information as the banking board may require. A summary of such report must be published in some local newspaper and proof of such publication transmitted to the banking board, and such board may call for special reports at any time. Failure to make reports entails a penalty of $50 for each day's delinquency, and those making false statements in such reports or in the books of the bank may be punished as felons. It is likewise a felony for a bank to receive moneys or permit same to be received on deposit when the bank is insolvent; to loan to an officer or employe of the corporation without the approval of a majority of the directors; to carry as assets any note or obligation of the partnership, member thereof, or individual, where such partnership or individual do a banking business; to permit shareholders, where the bank is a corporation, to become indebted in a sum exceeding 50 per cent of the paid-up capital of such bank. The aggregate of the rediscounts and bills receivable of any bank shall at no time exceed two-thirds of the paid-up capital. Savings banks shall always have on hand in available funds, consisting of cash and balances due from other solvent banks, at least 5 per cent, and other banks at least 15 per cent, of the aggregate deposits; and in cities having a population of more than 25,000, such reserve shall be 20 per cent of such aggregate deposits, and two-fifths of such reserve shall be cash in the vaults of the bank. A bank may not loan on the security of shares of its capital stock, nor be the purchaser or holder of such shares, unless such security or purchase be necessary to prevent loss upon a debt previously contracted, but such stock shall be disposed of within six months, and in no event shall it exceed 10 per cent of the paid-up capital. One-tenth of the net profits shall go to a surplus fund until the same amounts to 20 per cent of the paid-up capital. Not more than 20 per cent of the paid-up capital shall be loaned to any single corporation, firm or individual, including in such loan all loans made to the several members or shareholders of such firm or corporation. Every stockholder is liable for debts accruing during his ownership of stock, for an amount equal to the paid-up value of the shares held, and all shares of stock are assessed in the place where the bank is located, whether the owners thereof reside there or not, and taxes are a lien upon the stock. Every bank shall keep a correct list of names and residences of all stockholders, with the amount held by each, for the inspection of stockholders, creditors, and taxing officers. Savings banks must adopt rules and regulations for the conduct of their business, which must be approved by the banking board, and posted up conspicuously in the place of business; and the bank's funds, except the reserve, must be invested in bonds of the United States, or those of any city, county, township, village, or school district of any State authorized by the legislature, or shall be loaned on negotiable paper secured by such bonds, or mortgage upon unincumbered real estate, but second mortgage loans may be made on improved farm lands, where the loan, including the prior encumbrances thereon, does not exceed 50 per cent of the cash value of the land; and such funds may also be loaned upon notes secured by other collateral security, but savings banks are prohibited from investing in chattel mortgages, except those on cattle. No savings bank shall receive deposits exceeding ten times its paid-up capital and surplus.

Bonds. *(See Surety Bonds.)*

Chattel Mortgages. Every chattel mortgage, if not accompanied by an immediate delivery of the goods and be followed by an actual and continued change of possession thereof, is absolutely void as against creditors of the mortgagor and as against subsequent purchasers and mortgagees in good faith, unless such mortgage, or a copy thereof, be filed in the county clerk's office where the mortgagor resides, and if he be a non-resident, then in the clerk's office of the county where the mortgaged property be situated. Such chattel mortgage need not be acknowledged unless it convey household goods used in the family by the husband and wife, or either, in which case it must be signed and acknowledged by both husband and wife, the same as real estate conveyances. A mortgage after record is valid as against creditors of the mortgagor or subsequent purchasers or mortgagees, for five years. If no power of sale in the mortgage then foreclosure is had by action in court; otherwise is foreclosed by advertisement in a newspaper for twenty days offering the property for sale, which notice shall specify the date of the mortgage and where recorded, the names of the mortgagor and mortgagee and the assignee of the latter, if any, the amount claimed to be due on the mortgage at time of first publication and a description of the mortgaged property substantially as contained in the mortgage, together with the time and place of sale, which must take place between the hours of 10.00 A. M. and 4.00 P. M. in the county where the mortgage was first recorded, or in any other county where the property has been removed mean time, and such sale may be postponed from time to time by inserting a notice of such postponement in the newspaper publishing the advertisement of sale. If there be no newspaper in a county, provision is made for posting up notices. Verbal mortgages are good between the parties. It is a felony to transfer or dispose of personal property mortgaged without procuring the consent of the mortgagee, or to remove same out of the county with intent to defraud the mortgagee of his security. Chattel mortgages are resorted to frequently by insolvents to prefer certain of their creditors, and where executed in good faith to secure a *bona fide* debt, are usually sustained as against the attacks of other creditors.

Conditional Sales. A sale or lease of personalty may be made and title thereto retained in the vendor until the purchase price be fully paid, or condition complied with, by having the contract of sale or lease in writing signed by the vendee or lessee, and then filing copy of same in the county clerk's office, with affidavit of vendor, his agent or attorney attached thereto, giving names and full and true interest of parties and description of the property. Such sale or lease shall be invalid at expiration of five years as against purchasers in good faith, or judgment or attaching creditors, unless the vendor or lessor shall, within thirty days prior to the expiration of the five years, repeat the filing, which must be made annually thereafter.

Consignments. It is a felony on the part of a factor or agent to whom goods have been consigned to sell or assign such goods with intent to defraud the owner. Is also a felony for the owner of goods, after receiving an advancement upon the shipment, to sell or transfer such goods contrary to the agreement between him and the consignee; so to execute a fictitious bill of lading, warehouse receipt, or like instruments with intent to defraud.

Corporations. Two or more persons may organize a corporation for lawful purposes by adopting articles of incorporation and filing same in the office of the county clerk of the county where the principal place of business is situated, and also filing them in the office of the secretary of state. Within four months must publish notice in some newspaper for four weeks, which shall state the name, the place, and nature of business, by what officers business shall be transacted, amount of capital stock and conditions under which shall be paid in, time of commencement and termination of the corporation, and highest amount of indebtedness it may incur, which in no case shall exceed two-thirds the capital stock. Changes in articles of incorporation must be adopted, recorded,

and published in same manner. By-laws must be posted conspicuously at place of business. Annual notice must be published of all existing indebtedness of the corporation. After corporate property exhausted, subscribers to stock are liable for unpaid subscription, and if provisions of the statute as to notice, etc., are not substantially complied with, then after assets exhausted, each stockholder is personally liable to the extent of the amount of stock held by him.

Costs. (*See Security for Costs.*)

Courts. (*See Appeals.*) Justice and county courts are, for all practical purposes, open at all times except holidays; but their jurisdiction is limited. District courts have general jurisdiction, and have exclusive jurisdiction in certain cases. The terms of the district court in each county are fixed by the presiding judge at the beginning of each year. The supreme court has original jurisdiction in a few cases provided by statute, but its work is principally confined to reviewing decisions of the district court.

Curtesy. (*See Dower.*) Husband after death of wife, if there be no issue, has the use during his lifetime of all lands owned by her at the time of her decease. If she leaves issue by him he takes a one-third interest for his lifetime in the inheritance of such issue. If she leaves issue by a former husband, to whom her estate might descend, such issue will take all lands not a gift to her from the surviving husband, free from his estate by curtesy.

Days of Grace. (*See Notes.*)

Decedents. (*See Administration of Estates.*) If a party leaves no will, his property descends, subject to his debts, as follows: 1. In equal shares to his children and to the lawful issue of any deceased children by right of representation, and if there be no children living, estate goes to all other lineal descendants, and if all such descendants are in the same degree of kindred, they take equally, otherwise according to right of representation. 2. If he shall leave no issue, estate goes to widow during her lifetime and a her decease to his father, and if he shall have no issue nor widow, his estate goes to his father. 3. If intestate leave no widow nor children nor father, his estate goes in equal shares to his mother and brothers and sisters, and the children of any deceased brother or sister by right of representation. 4. If there be no children nor widow nor father nor brother nor sister, estate shall descend to his mother. 5. If intestate leave none of the foregoing heirs, his estate shall descend to next of kin in equal degree, except that when two or more claim through different ancestors, the nearest ancestor shall have preference. 6. If intestate shall leave a widow, and no kindred, his estate shall descend to such widow. 7. If no widow and no kindred, estate shall escheat to the State. Provision is also made for surviving children dying under age, unmarried. Under certain circumstances an illegitimate child may inherit. Claims against estates must be presented within time fixed by court, of which notice is given by advertisement, and which time is not less than six months nor more than two years after letters of administration issue.

Deeds (*see Acknowledgments*) must be signed in presence of one witness and acknowledged. Grantor's seal not required. Deed conveys all interest of the grantor, unless a contrary intention is expressed. A homestead can only be encumbered and conveyed by deed signed by both husband and wife, and the wife, to bar her dower interest, should join in all deeds. A deed executed in a foreign country is valid if it be in accordance with the laws of such country or of this State. No separate examination of the wife is necessary. Provision is made for proof of execution and delivery if grantor die before acknowledging, or refuse to acknowledge a deed. A deed properly acknowledged may be received and read in evidence, and a certified copy thereof from the land records may be used with like force and effect. Deeds and mortgages are valid between the parties without record, but are invalid as against all creditors and subsequent purchasers in good faith without notice. Unless properly acknowledged, a deed is not entitled to be recorded. A deed absolute in terms, but really a mortgage, is treated as a mortgage.

Depositions may be taken at any time after service of summons, and may be used as evidence only when the witness does not reside in the county of trial or is absent therefrom, or is unable to attend court, or is dead, or when written testimony is required instead of it being oral: may be taken before various officers, but are usually taken before a notary public. The officer must not be a relative or the attorney of either party or otherwise interested in the event of the action, and this fact should be stated in his certificate attached to the deposition. The court or judge may appoint a special commissioner to take a deposition, but this is seldom done. The usual way is simpler, viz.: Prepare notice specifying the action and name of the court, the time and place of taking the deposition, and the names of witnesses. Serve such notice upon opposite party, or his attorney, or leave at his usual place of residence, allowing sufficient time for him to reach the place of taking the deposition by the usual route of travel and one day for preparation, excluding Sundays and the day of service of the notice. In case the party is a non-resident, provision is made for service by advertisement for three weeks in a newspaper. The deposition must be written in presence of the officer taking the same and subscribed by the witness. Certificate must show that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth, that the deposition was reduced to writing by some person (naming him), and that it was written and subscribed in the presence of the officer, and was taken at the time and place specified in the notice. It must be then sealed up and indorsed with the title of the cause, and the name of the officer taking it, and by him addressed and transmitted to the clerk of the court where the action is pending. It must be filed in court at least one day before the trial. If taken out of the State, and the officer has no seal, a certificate under the great seal of the State, or of a clerk of a court of record under seal should be appended, stating that the officer was, at the time of taking the deposition, properly authorized.

Descent and Distribution. (*See Decedents.*)

Divorce. The district court has exclusive jurisdiction over divorce actions, which must be brought in the county where one of the parties reside. Complainant must have been a resident of the State for six months immediately preceding commencement of the action, unless the marriage is solemnized in this State, and the plaintiff shall have resided therein from such time to the time of filing the complaint. If parties at time of marriage were under the age of consent, such marriage may be annulled, if they should separate during such non-age, and not live together as man and wife thereafter, or in case the consent of one of the parties was obtained by force or fraud and they have not lived together voluntarily since such marriage. A divorce may be decreed for the following causes: Adultery, physical incompetency at time of marriage, imprisonment for three years or more, abandonment for two years, habitual drunkenness, extreme cruelty, whether personal violence used or not. A wife may obtain divorce on the ground that the husband, being of sufficient ability to provide suitable maintenance for her, shall grossly or wantonly and cruelly refuse or neglect so to do. Both husband and wife may be witnesses as in other civil cases. Alimony and suit money are allowed.

Dower. (*See Curtesy.*) The widow of every deceased person shall be entitled to the use during her natural life, of one-third of all the lands of which her husband was seized of an estate of inheritance at any time during the marriage, unless lawfully barred. Where provision for the widow is made by will, she may take under such will, or may take her dower interest in the lands, and shall have one year from the death of the husband in which to make her election, but she can not have both, unless the will so specify. Mortgages executed by the husband for purchase money of lands are superior to dower, and when the husband trades land during coverture, without the wife's consent, the widow has one year after his death in which to decide in which land she shall claim dower. A non-resident wife has no dower interest, but a non-resident widow has her dower interest in all lands in the State of which her husband died seized. Dower may be barred by the wife joining in a deed of conveyance; by a jointure settlement or by a pecuniary provision before marriage with her assent.

Estates. (*See Decedents.*)

Evidence. The husband can not in any case be a witness against the wife, nor a wife against the husband except in a criminal proceeding for a crime committed by the one against the other, but they may, in all criminal prosecutions, be witnesses for each other. In all civil cases they are competent witnesses for each other. They may not divulge any communication made by the one to the other during marriage, but this may be waived. Interested parties may testify in their own behalf. Client's communications to attorneys are privileged, and likewise confessions made to a clergyman or priest. A witness can not be compelled to testify as to matters where his answers would tend to criminate him.

Executions (*see Judgments, Proceedings in Aid of Execution*) may issue at any time after judgment, if no stay bond be filed, and until five years thereafter. May be directed to any county in the State and to different counties at the same time. Must first be levied upon personal property, and if that is not sufficient, then upon realty. Land sold upon execution or decree of court may be redeemed by the debtor at any time before confirmation of such sale. A stay of execution is allowed by giving bond with approved sureties as follows: In district court within twenty days, not exceeding $50, three months; $50 to $100, six months; exceeding $100, nine months. In justice and county courts, within ten days, as follows: $10 or under, stay of sixty days; $10 to $50, ninety days; $50 to $100, six months; over $100, nine months. Land sold under execution must be appraised and must bring two-thirds of such appraisement.

Exemptions. A head of a family has exempt from levy and sale certain personal property and household furniture enumerated in the statute, and in addition thereto has exempt a homestead not exceeding in value $2,000, exclusive of the mortgage thereon, consisting of a dwelling in which the party resides and appurtenances and 160 acres of land on which same may be situated, or, at the option of the party, two contiguous lots in any incorporated city or village. Such exempt property shall be free from all judgment liens and from sale on execution, except that the homestead may be sold on foreclosure of mechanics' liens, and of mortgages executed by both husband and wife. If party has no homestead as above stated, he shall have exempt the sum of $500 in personal property in addition to the articles enumerated by statute. Mechanics, miners, or other persons, whether heads of families or not, have their tools and instruments exempt, and a professional man's library and implements are likewise exempt. All pension money, and property purchased and improved therewith, not exceeding $2,000 in value, is exempt. Exemption law does not apply to claims for clerks, laborers or mechanic's wages, nor can an attorney plead exemption in a suit for money or other valuable consideration received by him. Sixty days' wages of laborers, mechanics, and clerks who are heads of families are likewise exempt. "Head of a family" means the husband or wife when the claimant is a married person; every person who has resided on the premises with him or her and under his care or maintenance, (a) his or her minor child, or the minor child of his or her deceased husband or wife; (b) his minor brother or sister or the minor child of a deceased brother or sister; (c) a father, mother, grandfather or grandmother; (d) the father or mother, grandfather or grandmother of a deceased husband or wife; (e) an unmarried sister or any other of the relatives mentioned above who have attained the age of majority and are unable to take care of or support themselves. Exempt property is not susceptible of fraudulent alienation.

Foreign Corporations (*see Corporations, Aliens*) may become domestic by filing with the secretary of State a true copy of charter or articles of association, together with a certified copy of resolution adopted by the board of directors accepting the provisions of the Act of the Legislature of Nebraska, Chapter 42, Laws of 1889.

Fraud. (*See Statute of Frauds, Limitations, Consignments.*) Conveyances made for the purpose of defrauding creditors are void and intent is deemed a question of fact, not of law.

Garnishment. (*See Attachment.*) Writ may be issued before judgment in attachment proceedings. After judgment and after execution returned unsatisfied, writ will issue by filing affidavit for same. No bond required after judgment. Property is in *custodia legis* from time of service of writ, and also all property which may come into garnishee's possession before answer day.

Holidays are January 1st, February 22d, April 22d, May 30th, July 4th, first Monday in September, Thanksgiving, and December 25th. No court can be open, nor can any judicial business be transacted on a holiday or Sunday, except, first, to give instructions to a jury then deliberating on their verdict; second, to receive a verdict or discharge a jury; third, to act as magistrate in a criminal proceeding; fourth, to grant or refuse a temporary injunction or restraining order.

Homestead. (*See Exemptions.*)

Husband and Wife. (*See Decedents, Evidence, Exemptions, Married Women, Marriage.*)

Insolvents. (*See Assignments.*)

Interest. Legal rate is 7 per cent and contract rate 10 per cent. Judgments draw same rate as specified in the instrument on which judgment obtained, otherwise 7 per cent. A contract is not avoided by usury, but in action thereon all payments are deducted from the principal and plaintiff recovers only the balance, without interest, and pays all costs.

Judgments. (*See Actions, Appeals, Exemptions, Executions, Interest.*) Those recovered in district court are liens upon real estate of debtor from first day of term at which rendered, except those by confession and those rendered at the same term at which action commenced are liens only from date of rendition. Transcripts of judgments in county and justice courts become liens from date of filing in the office of the clerk of the district court. Judgments may be made a lien upon lands in other counties by filing transcripts in the office of the clerk of the district court in such counties. A judgment becomes dormant in five years and lien upon real estate is lost if execution not issued within that time. After dormancy may be revived by certain proceedings. In judgments by con-

fession cause of action must be stated in the judgment or in a writing filed as a pleading. Deficiency judgments have been abolished.

Jurisdiction. (*See Actions, Judgments.*)

Justices of the Peace. (*See Courts, Judgments.*)

Leases. (*See Conditional Sales.*) Verbal lease is good for one year. For longer time must be in writing signed by the parties.

Liens. (*See Judgments.*) Material men and laborers and mechanics are entitled to liens upon the building or improvements for material furnished and labor performed, by filing in the office of the register of deeds an itemized statement of account duly verified by affidavit of party, showing amount due, nature of the contract, description of property, names of the parties; and if the claim arise out of a written contract, or if a note or other written evidence has been taken in payment of the account, copies must be attached. An original contractor must file such statement within four months from the time of furnishing such material or performing the labor; a sub-contractor within sixty days. Lien dates back to commencement of work or labor and is valid for two years from date of filing. All mechanics' liens on the same premises are of equal priority and prorate in the proceeds of sale of property, if sold under foreclosure thereof.

Limitations. (*See Actions.*) Actions brought to recover real property or foreclose mortgages thereon must be commenced within ten years after cause of action accrues. Actions for forcible entry and detention, libel, slander, assault and battery, malicious prosecution, false imprisonment, and those to enforce penalties or forfeitures, must be commenced within one year. Actions for trespass to real property, taking, detaining or injuring personal property, upon contracts not in writing upon the liability created by statute thereon, forfeiture or penalty for injuries to rights not arising out of contract, for relief on the ground of fraud, and all other actions not specifically limited by statute, must be commenced within four years. Actions upon a specialty, agreement, contract in writing, promissory notes, etc., and foreign judgments, must be commenced within five years. Actions upon official bonds of executors, administrators, guardians, sheriffs, or other officers, and upon statutory bonds, must be commenced within ten years. If parties under disability, cause of action does not commence to run until such disability removed.

Limited Partnership. (*See Partnerships.*) Articles thereof must be in writing, acknowledged by the parties and recorded in the office of the county clerk of every county where partnership shall have a place of business. The special partner is not liable beyond the amount contributed to the partnership funds, but has nothing to do with the management or conduct of the business; otherwise is liable as general partner. Special partner's name shall not appear in the firm.

Marriage. (*See Married Women.*) Male must be eighteen years and female sixteen years of age, unless consent of parent or guardian be obtained. License should be first procured from county judge, but failure to do so does not invalidate the marriage. When either party is a minor, no license will issue without the verbal consent, if present, or written consent, if absent, of the father, if living, if not, then of the mother or guardian of such minor. Property of either party is not liable for the debts of the other contracted before marriage. Antenuptial contracts and settlements are recognized.

Married Women (*see Decedents, Evidence, Exemptions, Marriage*) may contract, bargain, sell, and convey their separate property same as *femme sole*, and retain ownership and control of their own property, notwithstanding the marriage. May sue and be sued, carry on trade or business, perform services, and use and invest, devise, lease, and convey their property as if unmarried. A married woman is not liable as surety unless she sign obligation with special reference to her separate estate.

Mechanics' Liens. (*See Liens.*)

Mortgages. (*See Actions, Acknowledgments, Courts, Dower, Limitations, Chattel Mortgages.*) Mortgagor, regardless of stipulation contained in mortgage (and in the absence of special agreement, which must be in a separate writing), retains legal title and right of possession of property. In case of assignment of mortgage such assignment should be recorded and notice given to the mortgagor, as payment in good faith by such mortgagor, without such notice, to original mortgagee, held valid. Release may be by separate instrument or upon the mortgage records in register of deed's office, and if mortgagee, after mortgage fully paid, neglects or refuses for seven days to discharge such mortgage, he is liable to a penalty of $100 and all actual damages suffered by the other party. Mortgages can only be foreclosed by suit, and after foreclosure suit commenced no action can be maintained at law upon the debt, and if action be first commenced at law, can not foreclose the mortgage until judgment obtained and execution returned thereon unsatisfied. After decree of foreclosure of mortgage obtained, defendant may stay further proceedings for nine months by filing a request for stay in the office of the clerk of the court within twenty days after such decree entered. Such stay is equivalent to redemption period allowed in other States, and owner may redeem at any time before confirmation of sale. Deeds are held to be mortgages when intended only as security, and must be foreclosed same as mortgages.

Notaries Public. Seals must contain the words "Notarial Seal," name of the county, and the word "Nebraska"; and engraved upon seal or written under it must be the date when the notarial commission expires.

Notes and Bills. All notes, bonds, or bills of exchange, except bank checks and instruments payable on demand, are entitled to three days of grace. Are not negotiable unless drawn payable to a person, bearer, order, or assigns. If date of maturity or third day of grace fall on Sunday, are payable on the next business day. When fall due on a holiday, and such holiday be Sunday, then the following Monday is deemed a public holiday for purposes of presentment and protest, and is treated and considered as Sunday, and such presentment and protest and notice of dishonor is to be made the following business day. Party purchasing negotiable paper before maturity, without notice, take same free from equities between original parties.

Partnership (*see Limited Partnerships*) must adopt and sign articles of partnership agreement showing firm name, nature and place of business, name and residence of each member, and file same in the office of the county clerk of the county where business is located. Neglect or refusal to comply with this requirement entails penalty, but does not effect legality of business transacted. Partnership may sue and be sued in the firm name, and it is not necessary to set forth in the pleading, or prove at the trial, the names of the persons composing the firm, but in such event plaintiff must give security for costs.

Power of Attorney to convey real estate must be executed and acknowledged same as deeds and may be recorded.

Practice. Regulated by code which is patterned after Ohio.

Probate. (*See Courts, Decedents.*) County court has exclusive original jurisdiction of all probate matters.

Proceedings in Aid of Execution. When an execution has been returned unsatisfied, the plaintiff may file an affidavit alleging that the debtor has property which he unjustly refuses to apply to the satisfaction of the judgment, and thereupon the county or district judge may issue an order requiring the debtor to appear and answer under oath concerning his property, and other witnesses may be summoned and examined. Debtor shall not be excused from answering a question because such answer may tend to convict him of fraud, but his answer shall not be used as evidence against him in a prosecution for such fraud.

Proof of Claims. (*See Decedents.*) Same rules of evidence govern as in civil actions.

Protest. (*See Notes.*)

Records. (*See Deeds, Judgments, Mortgages, etc.*) In counties having a population of less than 18,000, the county clerk acts as register of deeds; and in counties having a population of less than 8,000 also acts as clerk of the district court. Deeds, real estate mortgages, releases, mechanics' liens, assignments for benefit of creditors affecting real estate, and all other instruments affecting real property, are to be recorded in the office of register of deeds. Chattel mortgages, conditional sales, leases of personal property, assignments for benefit of creditors, articles of incorporation and of co-partnership, are kept in the office of the county clerk.

Redemption. (*See Judgments, Mortgages, Taxes.*) No redemption of personal property after sale.

Replevin. Party may recover possession of personal property within four years after cause of action accrued by filing petition and affidavit of himself, agent or attorney, giving a description of the property, stating the facts connected with the ownership, and that he is entitled to the immediate possession, etc., of the property. It is then seized by the officer and duly appraised, and within twenty-four hours thereafter plaintiff must give bond in double the appraised value, conditioned that he will duly prosecute the action and pay all costs and damages that may be awarded against him, and return the property or its reasonable value to the defendant in case judgment for a return be rendered. Where the appraised value of the property taken exceeds the jurisdictional amount of the court, the proceedings must then be certified to the district court, which has general jurisdiction.

Sales. (*See Conditional Sales.*)

Security for Costs. When plaintiff be non-resident of the county where suit is brought, and when it be a partnership suing in the firm name, may be required to furnish security for costs. So also a guardian or next friend suing for an infant, and a party procuring himself to be substituted in place of a sheriff, in an action against the latter, for the recovery of goods levied on.

Statute of Frauds. No estate or interest in land, other than lease for one year, valid unless in writing and subscribed by the party, and the following must be in writing: Agreements not to be performed within one year, every special promise to answer for the debt, default, or misdoings of another, every agreement or promise made upon consideration of marriage, except mutual promise to marry, every special promise by an executor or administrator to answer damages out of his own estate, every contract for the sale of goods, chattels or things in action for the price of $50 or more, unless the buyer shall accept or receive a part of such goods or the evidences, or some of them, of such things in action, or unless the buyer shall, at the time, pay part of the purchase money. Every sale or transfer of personal property, either absolute or as security, is presumptively fraudulent as against creditors or subsequent purchasers in good faith, unless accompanied by immediate delivery and be followed by an actual and continued change of possession.

Statutes. First enacted by the territorial legislature in 1866. Nebraska was admitted into the Union in 1867, with a constitutional provision continuing the territorial laws in force until changed by the legislature. In 1873 the general statutes of Nebraska were compiled by legislative authority, but were not enacted by the legislature. Present constitution took effect November 1, 1875, and contains a provision that all laws in force at the time of its adoption and not inconsistent with it should continue in force. In 1881 compiled statutes of Nebraska were prepared under authority of the legislature, which provided that when published they should be received in the courts as evidence, and in 1885 this was made to apply to subsequent editions. Pursuant to this authority editions of 1881, 1885, 1887, 1889, 1891, 1893, 1895, and 1897 have been issued by Messrs. Brown and Wheeler. The "consolidated statutes of Nebraska" of 1891 and 1893 by J. E. Cobbey also authorized to be received in evidence.

Stay. (*See Executions, Judgments, Mortgages.*)

Summons. (*See Actions, Attachments, Divorce.*)

Supplementary Proceedings. (*See Proceedings in Aid of Execution.*)

Surety Bonds. Provision is made for surety companies to execute bonds of all sorts, and such bonds are now accepted by all courts and officers.

Taxes. County and State taxes upon real estate due October 1st each year. Delinquent May 1st of following year, from which time they draw interest. Advertised October 1st and sold first Monday in November thereafter. Interest after delinquency 10 per cent. Interest after sale for two years, 20 per cent. Personal taxes delinquent February 1st of each year. Taxes are a lien upon real estate from the time of their assessment. Where land sold for taxes certificate thereof may be foreclosed and property sold to pay amount due. No provision for valid tax deed in this State.

Trust Deeds are seldom used and are treated as mortgages.

Wills. (*See Decedents.*) Every person of full age and sound mind may dispose of his property by will, which must be signed by the testator, or under his express direction, by some one in his presence and subscribed in his presence and in the presence of each other, at his request, by two or more competent witnesses. Nuncupative wills are valid when proved by the oath of three witnesses present at the making thereof, and when the testator at the time asked the persons to bear witness that such was his will, or words of like effect. No will shall be effectual to pass title to any property unless probated. Foreign wills duly proved and allowed in any State or foreign country may be probated in this State in any county wherein the testator shall have real or personal property, on which the will shall operate.

SYNOPSIS OF THE LAWS OF NEVADA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by TORREYSON & SUMMERFIELD, Attorneys at Law, Carson City and Reno. *(See Card in Attorneys' List.)*

Acknowledgments may be taken within the State by a judge or clerk of a court having a seal, or by a justice of the peace or notary public. If taken by a justice of the peace in any county in the State other than the county in which the land is situate, a certificate of the county clerk is necessary, showing he was an acting justice when the acknowledgment was taken. If without the State, but within the United States, by a judge or clerk of a court having a seal, or some notary public or justice of the peace, or by any commissioner appointed by the governor of this State for that purpose. Provided, that when the acknowledgment is taken by a justice of the peace, the same shall be accompanied by the certificate of the clerk of a court of record of the county, having a seal, as to the official character of the justice and the authenticity of his signature. If without the United States, by some judge or clerk of any court of any State, Kingdom or Empire having a seal, or by any notary public therein, or by any minister, commissioner, or consul of the United States, appointed to reside therein.

Actions. *(See Limitations.)*

Affidavits. Affidavits taken out of this State to be used before any court or officer in this State must be taken before a notary public, a commissioner appointed by the governor of this State, or a judge of a court having a seal attested by the clerk. If in a foreign country such affidavits shall be taken before an embassador, minister, or consul of the United States, or judge of a court in such foreign country having a seal.

Appeals. Actions tried in justice court may be appealed to district courts, where trial is had *de novo* and can proceed no farther. Actions in which the district courts have original jurisdiction may be appealed to the supreme court.

Arbitration. Provision is made by law for the settlement of disputes by arbitration; the award of the arbitrators to be filed with the clerk of the district court and docketed the same as a judgment in civil action.

Arrest. *(See Attachment.)*

Assignments and Insolvency. Except as affected by the national bankruptcy act of 1898, the following statute respecting assignment is in force: Insolvent debtors may be discharged from their debts by complying with provisions of insolvent laws. An assignment of insolvent debtor, not in compliance with insolvent laws, is void as to creditors.

Attachment. Writ of attachment may be issued with summons, or at any time afterward on affidavit and bond. In an action upon a contract for the direct payment of money, made, or by the terms thereof payable, in this State, which is not secured by mortgage, lien, or pledge upon real or personal property, situated or being in the State; if so secured, when such security has been rendered nugatory by the act of the defendant; or in an action upon a contract against a defendant not residing in this State. In an action by a resident of the State for the recovery of the value of property, where such property has been converted by a defendant without the consent of the owner. Where the defendant has absconded, or is about to abscond, with intent to defraud his creditors. Where the defendant conceals himself so that service of summons can not be made upon him. Where a defendant is about to remove his property, or any part thereof, beyond the jurisdiction of the court with the intent to defraud his creditors. Where a defendant is about to convert his property, or any part thereof, into money with intent to place it beyond the reach of his creditors. Where a defendant has assigned, removed, disposed of, or is about to dispose of his property, or any part thereof, with the intent to defraud his creditors. Where a defendant has fraudulently or criminally contracted a debt or incurred the obligation for which suit has been commenced. Garnishee process may be had in aid of attachment. A fraudulent or absconding debtor, or one who conceals his property, or removes or disposes of it with intent to defraud his creditors, may be arrested on affidavit of the fact made; surety in not less than $500 being given by the plaintiff. The clerk of the court shall issue the writ of attachment upon receiving and filing an affidavit by or on behalf of the plaintiff, showing the nature of the plaintiff 's claim, that same is just, the amount which the affiant believes the plaintiff is entitled to recover, and the existence of any one of the grounds for an attachment above enumerated.

Banks. There are no provisions in the constitution or laws of the State, and no examination is provided for. There are no requirements to make public statements showing the condition of banks, and none are made. Nor are the banks obliged to make returns to any official. Bankers may do as they please in Nevada. Integrity in the banker is the only safeguard.

Conveyances. The husband has the entire management and control of the community property, with the like absolute power of disposition thereof, except as hereinafter provided, as of his own separate estate; provided, that no deed of conveyance, or mortgage, of a homestead as now defined by law, regardless of whether a declaration thereof has been filed or not, shall be valid for any purpose whatever, unless both the husband and wife execute and acknowledge the same as now provided by law for the conveyance of real estate.

Courts. *Terms and Jurisdiction.* District courts have original jurisdiction in all cases in equity, also in law, when the title or possession of land or mining claims may be involved, or legality of any tax, etc., also in actions to foreclose mechanics' lien; and in all cases in which the demand, exclusive of interest, or the value of the property in controversy exceeds $300, also in all cases relating to estates of deceased persons, and persons and estates of minors, insane persons, etc. Justice's jurisdiction, $300, exclusive of interest, and concurrent jurisdiction with district courts in foreclosure of mortgages and liens, not exceeding $300, exclusive of interest.

Days of Grace. Three days grace is allowed on notes and bills of exchange, except when otherwise stated in the contract.

Dower is not recognized in this State.

Executions. *Stay of Execution; Judgments.* The laws of Nevada on these points are similar to those of California [see *ante*], except that when redemption is made of real estate, 18 per cent must be paid in addition to purchase money.

Exemptions. Homestead, $5,000; $50 of the earnings of the debtor, if earned thirty days preceding, if it is made to appear necessary for the support of the debtor, or his family; personal and mining property, tools, implements, etc., exempt same as in California [which see].

Garnishment. *(See Attachment.)*

Holidays. Sunday, New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, October 31st (Nevada admission day), Thanksgiving, and all days on which a general election is held, are non-judicial days and are termed legal holidays and generally observed as such. Also Arbor day fixed by proclamation of governor one month before fixing such date, and is only a holiday for public schools. Bills of exchange, checks, promissory notes, and other negotiable instruments falling due upon any holiday are payable the day previous.

Husband and Wife. *(See Married Women.)*

Interest. The legal rate is 7 per cent per annum, but parties may contract in writing for the payment of any other rate. After a judgment on such a contract, only the original claim shall draw interest, and the rate of interest must be mentioned in the judgment.

Limitations of Suits. Open or store account and contract not in writing, four years; upon contract or instrument of writing, six years; recovery of mining claims, two years; real actions—the person prosecuting or defending the same must show that he was seized or possessed of the premises within five years before the commencement or defense of the action, judgment, or decree of the district court—six years; of the justices court—five years. Revivor: Acknowledgment or new promise in writing. Judgments become a lien upon real property for two years.

Married Women. All property of the wife, owned by her before marriage, and that acquired afterward by gift, bequest, devise or descent, her separate property. In Nevada, under the statute of 1873, the wife has absolute power over her separate property, and may dispose of the same without the consent of her husband. All other property acquired during coverture by husband or wife, common property, but controlled by husband. Upon a dissolution of the community by the death of the husband, the homestead set apart by the husband and wife, or either of them, goes to the wife and minor children, and if there are no minor children, to the widow. The husband may dispose of one-half of the common property by will, exclusive of the homestead. The other half of the community property goes to the wife, subject to administration and debts of the husband.

Mortgages must be recorded. No mortgage of personal property is valid unless possession is delivered to and retained by the mortgagee, or unless the mortgage is recorded in the county where the mortgagor and mortgagee reside. Recording is equivalent to possession, except that growing crops and other personal property may be mortgaged by the execution, acknowledgment, and recording of a mortgage instrument without such possession. Mortgages of real estate can only be foreclosed by action for foreclosure.

Notes and Bills of Exchange. Commercial paper includes promises to pay to order, or bearer, without conditions, for a sum certain and at a time certain. No requirement respecting place of payment, but, if place of payment is named, demand should be made before protest at place named. Protest and notice will hold the indorser, and the general statute of limitation, six years, and on open account, four years, is the limitation of the right of action. Fifteen per cent damages are allowed on domestic, and twenty per cent on foreign bills protested. Grace is not allowed on sight drafts.

Probate. All claims against estates of deceased persons must be filed within three months after the first publication of the notice of appointment of the executor or administrator. Estates not exceeding $2,000 in value, in the discretion of the judge, may be summarily administered, and in cases of summary administration all regular proceedings and notices are dispensed with, except the notice of the appointment of the executor or administrator. Creditors of such an estate must file their claims within forty days.

Suits. Practice is under a code, and there is but one form of action, known as a civil action, and commenced by filing complaint with the clerk of the court and the issuance of a summons. Service on non-residents may be had by publication.

Taxes are a lien upon the property assessed and the real estate of the owner thereof from the first Monday of March in each year. Suits for delinquent taxes may be commenced by direction of the county commissioners, and there is redemption of real estate sold at tax sale in the same manner as realty sold under ordinary execution.

SYNOPSIS OF THE LAWS OF NEW HAMPSHIRE

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. E. S. & H. A. CUTTER, Attorneys at Law, Nashua. *(See Card in Attorneys' List.)*

Accounts. Accounts are recoverable in an action of assumpsit. They are due upon demand, and interest at the rate of 6 per cent simple interest begins to run from the date of demand. They are proved by the production of the book of account, containing the original entries, verified by a supplementary oath. They are not evidence as to payments of money exceeding $6.66.

Acknowledgments of deeds or other conveyances of real estate must be made before a justice, notary public or commissioner, or in foreign countries before a minister or consul of the United States. The signature of the grantor must be attested by two witnesses.

Actions. The common law prevails as to procedure. The actions are assumpsit, to recover upon a promise; debt, to recover the amount of a judgment, or the amount of a bond, or a statute penalty; covenant, to recover for the breach of a warranty in a deed, or covenants in a sealed instrument; detinue, for the detention of property; real actions, to determine the title to real estate; replevin, to recover personal property in specie; and tort, to recover damages arising from negligence, trespass and frauds generally. Non-residents can institute suit, a resident becoming responsible for costs by indorsing the writ. The plaintiff's attorney usually endorses. Transitory action may be brought in the county where one of the parties reside. If both are non-residents the action may be brought in any county. Fourteen days notice required in the service of writs. Actions may be prosecuted by appeal from a police to the supreme court, if claimed within two hours after judgment, and if bond is filed within twenty-four hours, running to the adverse party in the sum of $100, to pay all costs which may be recovered against the appellant. *(See Administration of Estates, Executions.)*

Administration of Estates. Administration shall be granted in the following order of precedence: To the executor named; to the widow, or any of the next of kin, or to such person as they shall nominate; to one

fession cause of action must be stated in the judgment or in a writing filed as a pleading. Deficiency judgments have been abolished.

Jurisdiction. (*See Actions, Judgments.*)

Justices of the Peace. (*See Courts, Judgments.*)

Leases. (*See Conditional Sales.*) Verbal lease is good for one year. For longer time must be in writing signed by the parties.

Liens. (*See Judgments.*) Material men and laborers and mechanics are entitled to liens upon the building or improvements for material furnished and labor performed, by filing in the office of the register of deeds an itemized statement of account duly verified by affidavit of party, showing amount due, nature of the contract, description of property, names of the parties; and if the claim arise out of a written contract, or if a note or other written evidence has been taken in payment of the account, copies must be attached. An original contractor must file such statement within four months from the time of furnishing such material or performing the labor; a sub-contractor within sixty days. Lien dates back to commencement of work or labor and is valid for two years from date of filing. All mechanics' liens on the same premises are of equal priority and prorate in the proceeds of sale of property, if sold under foreclosure thereof.

Limitations. (*See Actions.*) Actions brought to recover real property or foreclose mortgages thereon must be commenced within ten years after cause of action accrues. Actions for forcible entry and detention, libel, slander, assault and battery, malicious prosecution, false imprisonment, and those to enforce penalties or forfeitures, must be commenced within one year. Actions for trespass to real property, taking, detaining or injuring personal property, upon contracts not in writing upon the liability created by statute thereon, forfeiture or penalty for injuries to rights not arising out of contract, for relief on the ground of fraud, and all other actions not specifically limited by statute, must be commenced within four years. Actions upon a specialty, agreement, contract in writing, promissory notes, etc., and foreign judgments, must be commenced within five years. Actions upon official bonds of executors, administrators, guardians, sheriffs, or other officers, and upon statutory bonds, must be commenced within ten years. If parties under disability, cause of action does not commence to run until such disability removed.

Limited Partnership. (*See Partnerships.*) Articles thereof must be in writing, acknowledged by the parties and recorded in the office of the county clerk of every county where partnership shall have a place of business. The special partner is not liable beyond the amount contributed to the partnership funds, but has nothing to do with the management or conduct of the business; otherwise is liable as general partner. Special partner's name shall not appear in the firm.

Marriage. (*See Married Women.*) Male must be eighteen years and female sixteen years of age, unless consent of parent or guardian be obtained. License should be first procured from county judge, but failure to do so does not invalidate the marriage. When either party is a minor, no license will issue without the verbal consent, if present, or written consent, if absent, of the father, if living, if not, then of the mother or guardian of such minor. Property of either party is not liable for the debts of the other contracted before marriage. Antenuptial contracts and settlements are recognized.

Married Women (*see Decedents, Evidence, Exemptions, Marriage*) may contract, bargain, sell, and convey their separate property same as *femme sole*, and retain ownership and control of their own property, notwithstanding the marriage. May sue and be sued, carry on trade or business, perform services, and use and invest, devise, lease, and convey their property as if unmarried. A married woman is not liable as surety unless she sign obligation with special reference to her separate estate.

Mechanics' Liens. (*See Liens.*)

Mortgages. (*See Actions, Acknowledgments, Courts, Dower, Limitations, Chattel Mortgages.*) Mortgagor, regardless of stipulation contained in mortgage (and in the absence of special agreement, which must be in a separate writing), retains legal title and right of possession of property. In case of assignment of mortgage such assignment should be recorded and notice given to the mortgagor, as payment in good faith by such mortgagor, without such notice, to original mortgagee, held valid. Release may be by separate instrument or upon the mortgage records in register of deed's office, and if mortgagee, after mortgage fully paid, neglects or refuses for seven days to discharge such mortgage, he is liable to a penalty of $100 and all actual damages suffered by the other party. Mortgages can only be foreclosed by suit, and after foreclosure suit commenced no action can be maintained at law upon the debt, and if action be first commenced at law, can not foreclose the mortgage until judgment obtained and execution returned thereon unsatisfied. After decree of foreclosure of mortgage obtained, defendant may stay further proceedings for nine months by filing a request for stay in the office of the clerk of the court within twenty days after such decree entered. Such stay is equivalent to redemption period allowed in other States, and owner may redeem at any time before confirmation of sale. Deeds are held to be mortgages when intended only as security, and must be foreclosed same as mortgages.

Notaries Public. Seals must contain the words "Notarial Seal," name of the county, and the word "Nebraska"; and engraved upon seal or written under it must be the date when the notarial commission expires.

Notes and Bills. All notes, bonds, or bills of exchange, except bank checks and instruments payable on demand, are entitled to three days of grace. Are not negotiable unless drawn payable to a person, bearer, order, or assigns. If date of maturity or third day of grace fall on Sunday, are payable on the next business day. When fall due on a holiday, and such holiday be Sunday, then the following Monday is deemed a public holiday for purposes of presentment and protest, and is treated and considered as Sunday, and such presentment and protest and notice of dishonor is to be made the following business day. Party purchasing negotiable paper before maturity, without notice, take same free from equities between original parties.

Partnership (*see Limited Partnerships*) must adopt and sign articles of partnership agreement showing firm name, nature and place of business, name and residence of each member, and file same in the office of the county clerk of the county where business is located. Neglect or refusal to comply with this requirement entails penalty, but does not effect legality of business transacted. Partnership may sue and be sued in the firm name, and it is not necessary to set forth in the pleading, or prove at the trial, the names of the persons composing the firm, but in such event plaintiff must give security for costs.

Power of Attorney to convey real estate must be executed and acknowledged same as deeds and may be recorded.

Practice. Regulated by code which is patterned after Ohio.

Probate. (*See Courts, Decedents.*) County court has exclusive original jurisdiction of all probate matters.

Proceedings in Aid of Execution. When an execution has been returned unsatisfied, the plaintiff may file an affidavit alleging that the debtor has property which he unjustly refuses to apply to the satisfaction of the judgment, and thereupon the county or district judge may issue an order requiring the debtor to appear and answer under oath concerning his property, and other witnesses may be summoned and examined. Debtor shall not be excused from answering a question because such answer may tend to convict him of fraud, but his answer shall not be used as evidence against him in a prosecution for such fraud.

Proof of Claims. (*See Decedents.*) Same rules of evidence govern as in civil actions.

Protest. (*See Notes.*)

Records. (*See Deeds, Judgments, Mortgages, etc.*) In counties having a population of less than 18,000, the county clerk acts as register of deeds; and in counties having a population of less than 8,000 also acts as clerk of the district court. Deeds, real estate mortgages, releases, mechanics' liens, assignments for benefit of creditors affecting real estate, and all other instruments affecting real property, are to be recorded in the office of register of deeds. Chattel mortgages, conditional sales, leases of personal property, assignments for benefit of creditors, articles of incorporation and of co-partnership, are kept in the office of the county clerk.

Redemption. (*See Judgments, Mortgages, Taxes.*) No redemption of personal property after sale.

Replevin. Party may recover possession of personal property within four years after cause of action accrued by filing petition and affidavit of himself, agent or attorney, giving a description of the property, stating the facts connected with the ownership, and that he is entitled to the immediate possession, etc., of the property. It is then seized by the officer and duly appraised, and within twenty-four hours thereafter plaintiff must give bond in double the appraised value, conditioned that he will duly prosecute the action and pay all costs and damages that may be awarded against him, and return the property or its reasonable value to the defendant in case judgment for a return be rendered. Where the appraised value of the property taken exceeds the jurisdictional amount of the court, the proceedings must then be certified to the district court, which has general jurisdiction.

Sales. (*See Conditional Sales.*)

Security for Costs. When plaintiff be non-resident of the county where suit is brought, and when it be a partnership suing in the firm name, may be required to furnish security for costs. So also a guardian or next friend suing for an infant, and a party procuring himself to be substituted in place of a sheriff, in an action against the latter, for the recovery of goods levied on.

Statute of Frauds. No estate or interest in land, other than lease for one year, valid unless in writing and subscribed by the party, and the following must be in writing: Agreements not to be performed within one year, every special promise to answer for the debt, default, or misdoings of another, every agreement or promise made upon consideration of marriage, except mutual promise to marry, every special promise by an executor or administrator to answer damages out of his own estate, every contract for the sale of goods, chattels or things in action for the price of $50 or more, unless the buyer shall accept or receive a part of such goods or the evidences, or some of them, of such things in action, or unless the buyer shall, at the time, pay part of the purchase money. Every sale or transfer of personal property, either absolute or as security, is presumptively fraudulent as against creditors or subsequent purchasers in good faith, unless accompanied by immediate delivery and be followed by an actual and continued change of possession.

Statutes. First enacted by the territorial legislature in 1866. Nebraska was admitted into the Union in 1867, with a constitutional provision continuing the territorial laws in force until changed by the legislature. In 1873 the general statutes of Nebraska were compiled by legislative authority, but were not enacted by the legislature. Present constitution took effect November 1, 1875, and contains a provision that all laws in force at the time of its adoption and not inconsistent with it should continue in force. In 1881 compiled statutes of Nebraska were prepared under authority of the legislature, which provided that when published they should be received in the courts as evidence, and in 1885 this was made to apply to subsequent editions. Pursuant to this authority editions of 1881, 1885, 1887, 1889, 1891, 1893, 1895, and 1897 have been issued by Messrs. Brown and Wheeler. The "consolidated statutes of Nebraska" of 1891 and 1893 by J. E. Cobbey also authorized to be received in evidence.

Stay. (*See Executions, Judgments, Mortgages.*)

Summons. (*See Actions, Attachments, Divorce.*)

Supplementary Proceedings. (*See Proceedings in Aid of Execution.*)

Surety Bonds. Provision is made for surety companies to execute bonds of all sorts, and such bonds are now accepted by all courts and officers.

Taxes. County and State taxes upon real estate due October 1st each year. Delinquent May 1st of following year, from which time they draw interest. Advertised October 1st and sold first Monday in November thereafter. Interest after delinquency 10 per cent. Interest after sale for two years, 20 per cent. Personal taxes delinquent February 1st of each year. Taxes are a lien upon real estate from the time of their assessment. Where land sold for taxes certificate thereof may be foreclosed and property sold to pay amount due. No provision for valid tax deed in this State.

Trust Deeds are seldom used and are treated as mortgages.

Wills. (*See Decedents.*) Every person of full age and sound mind may dispose of his property by will, which must be signed by the testator, or under his express direction, by some one in his presence and subscribed in his presence and in the presence of each other, at his request, by two or more competent witnesses. Nuncupative wills are valid when proved by the oath of three witnesses present at the making thereof, and when the testator at the time asked the persons to bear witness that such was his will, or words of like effect. No will shall be effectual to pass title to any property unless probated. Foreign wills duly proved and allowed in any State or foreign country may be probated in this State in any county wherein the testator shall have real or personal property, on which the will shall operate.

SYNOPSIS OF THE LAWS OF NEVADA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by TORREYSON & SUMMERFIELD, Attorneys at Law, Carson City and Reno. *(See Card in Attorneys' List.)*

Acknowledgments may be taken within the State by a judge or clerk of a court having a seal, or by a justice of the peace or notary public. If taken by a justice of the peace in any county in the State other than the county in which the land is situate, a certificate of the county clerk is necessary, showing he was an acting justice when the acknowledgment was taken. If without the State, but within the United States, by a judge or clerk of a court having a seal, or some notary public or justice of the peace, or by any commissioner appointed by the governor of this State for that purpose. Provided, that when the acknowledgment is taken by a justice of the peace, the same shall be accompanied by the certificate of the clerk of a court of record of the county, having a seal, as to the official character of the justice and the authenticity of his signature. If without the United States, by some judge or clerk of any court of any State, Kingdom or Empire having a seal, or by any notary public therein, or by any minister, commissioner, or consul of the United States, appointed to reside therein.

Actions. *(See Limitations.)*

Affidavits. Affidavits taken out of this State to be used before any court or officer in this State must be taken before a notary public, a commissioner appointed by the governor of this State, or a judge of a court having a seal attested by the clerk. If in a foreign country such affidavits shall be taken before an embassador, minister, or consul of the United States, or judge of a court in such foreign country having a seal.

Appeals. Actions tried in justice court may be appealed to district courts, where trial is had *de novo* and can proceed no farther. Actions in which the district courts have original jurisdiction may be appealed to the supreme court.

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Attachment. Writ of attachment may be issued with summons, or at any time afterward on affidavit and bond. In an action upon a contract for the direct payment of money, made, or by the terms thereof payable, in this State, which is not secured by mortgage, lien, or pledge upon real or personal property, situated or being in the State; if so secured, when such security has been rendered nugatory by the act of the defendant; or in an action upon a contract against a defendant not residing in this State. In an action by a resident of the State for the recovery of the value of property, where such property has been converted by a defendant without the consent of the owner. Where the defendant has absconded, or is about to abscond, with intent to defraud his creditors. Where the defendant conceals himself so that service of summons can not be made upon him. Where a defendant is about to remove his property, or any part thereof, beyond the jurisdiction of the court with the intent to defraud his creditors. Where a defendant is about to convert his property, or any part thereof, into money with intent to place it beyond the reach of his creditors. Where a defendant has assigned, removed, disposed of, or is about to dispose of his property, or any part thereof, with the intent to defraud his creditors. Where a defendant has fraudulently or criminally contracted a debt or incurred the obligation for which suit has been commenced. Garnishee process may be had in aid of attachment. A fraudulent or absconding debtor, or one who conceals his property, or removes or disposes of it with intent to defraud his creditors, may be arrested on affidavit of the fact made; surety in not less than $500 being given by the plaintiff. The clerk of the court shall issue the writ of attachment upon receiving and filing an affidavit by or on behalf of the plaintiff, showing the nature of the plaintiff 's claim, that same is just, the amount which the affiant believes the plaintiff is entitled to recover, and the existence of any one of the grounds for an attachment above enumerated.

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SYNOPSIS OF THE LAWS OF NEW HAMPSHIRE

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. E. S. & H. A. CUTTER, Attorneys at Law, Nashua. *(See Card in Attorneys' List.)*

Accounts. Accounts are recoverable in an action of assumpsit. They are due upon demand, and interest at the rate of 6 per cent simple interest begins to run from the date of demand. They are proved by the production of the book of account, containing the original entries, verified by a supplementary oath. They are not evidence as to payments of money exceeding $6.66.

Acknowledgments of deeds or other conveyances of real estate must be made before a justice, notary public or commissioner, or in foreign countries before a minister or consul of the United States. The signature of the grantor must be attested by two witnesses.

Actions. The common law prevails as to procedure. The actions are assumpsit, to recover upon a promise; debt, to recover the amount of a judgment, or the amount of a bond, or a statute penalty; covenant, to recover for the breach of a warranty in a deed, or covenants in a sealed instrument; detinue, for the detention of property; real actions, to determine the title to real estate; replevin, to recover personal property in specie; and tort, to recover damages arising from negligence, trespass and frauds generally. Non-residents can institute suit, a resident becoming responsible for costs by indorsing the writ. The plaintiff's attorney usually endorses. Transitory action may be brought in the county where one of the parties reside. If both are non-residents the action may be brought in any county. Fourteen days notice required in the service of writs. Actions may be prosecuted by appeal from a police to the supreme court, if claimed within two hours after judgment, and if bond is filed within twenty-four hours, running to the adverse party in the sum of $100, to pay all costs which may be recovered against the appellant. *(See Administration of Estates, Executions.)*

Administration of Estates. Administration shall be granted in the following order of precedence: To the executor named; to the widow, or any of the next of kin, or to such person as they shall nominate; to one

of the devisees or to a creditor; to such other person as the judge shall think fit. A non-resident shall not be appointed unless urgent necessity demands. An ample bond with resident sureties shall be filed, the condition of which is: To administer according to law, to return an inventory within three months, to render an account within one year, to pay the residue of the estate according to decree of the court. The testator may direct that no bond shall be required. The administrator shall, within ten days of his appointment, post notices thereof in the town where the deceased lived at the time of his decease. No suit shall be brought against the administrator within the first year of his administration. Claims shall be presented within one year after his appointment, and no action can be brought after two years. Actions are not maintainable against an administrator of an estate, after a decree of insolvency. Estates may be administered in the insolvent court, and then a commissioner shall be appointed to examine and allow claims. He shall hold at least two sessions, give notice of the times and place, and at the expiration of his commission, which is usually for six months, he shall render his report to the probate court. Preferred claims, to be settled in full are: Expenses of administration, widow's allowance, charges of burial, and taxes. Claims for the last sickness shall be paid in full if there remains anything after paying the preferred claims. (*See Appeals, Arbitration.*)

Affidavits. Affidavits are not admissible in evidence, being ex parte, but motions are heard upon affidavits presented to the court. May be made before an officer authorized to administer oaths. (*See Arrest.*)

Aliens. They are not entitled to vote. An alien may purchase, hold and convey real estate, and it will descend in the same manner as if he were a native born citizen. When the wife of an alien has resided in the State six months, separate from her husband, she acquires all the rights of the wife of a native born citizen.

Appeals from the probate court must be filed within sixty days after decree, and appeals from the commissioner's report within thirty days. Satisfactory bond must be filed and notice of the appeal served on the adverse party. (*See Actions.*)

Arbitration. The statute provides that a reference may be had under a rule from the judge of probate, whenever a creditor against an estate is dissatisfied with the report of a commissioner. The report of the referees shall be final. All controversies may be referred under the statute. The agreement therefor shall be in writing, and shall set forth, with particularity, the nature of the claim, and shall be signed by the parties. The referees shall have the same authority as if appointed by the court. Their report shall be returned to the court, whereupon the court shall take cognizance thereof as if proceedings had been originally begun therein.

Arrest. No woman, sheriff, or voter on election day is liable to arrest. No person is liable to arrest on a real action. (*See Attachments.*)

Assignments and Insolvency. Assignments for benefit of creditors to be filed in the probate court of the county in which debtor resides. If any part of the debtor's property is real estate, such assignment shall be executed with all the formalities of a deed of land. Debtor, within ten days thereafter, shall file list of creditors, verified by oath, and within fifteen days a schedule of his property. Involuntary assignment made by debtor upon petition of creditors whose claims amount to $300 and upwards; assignee to be appointed upon notice and upon the recommendation of two-thirds in numbers and a majority in value of those creditors who filed statement of their accounts. Creditors to file statements of their accounts upon oath within two months, and all objections thereto to be made within four months after the filing of the assignment. Claims may be proved any time before final dividend, and objections to such claim must be made within thirty days thereafter. Assignee shall immediately give bond, and return inventory of property. Assignee to render account within six months. Wages of clerks, domestics, and other laborers to be paid in full, not exceeding $50, for services rendered within six months prior to the beginning of insolvency proceedings, and taxable costs of all suits begun in good faith which were dissolved by the proceedings, debts due the United States and taxes. Debtor given a full discharge from all his debts upon the written approval of two-thirds of his creditors in number and amount, and without such approval upon paying 50 per centum of his debts. The provisions of the law upon this subject are suspended by the United States bankrupt law.

Attachments of all real and personal property may be made on the original writ, and constitute a valid lien on the property for thirty days after judgment, within which period the execution must be levied to preserve and perfect the lien. All attachments take precedence in order of priority, except in case of liens of builders, contractors, etc., when they take precedence in the order of priority of the lien. *Trustee process* (analogous to garnishment in other States) may be used to reach money or credits of the defendant in the hands of another. Save as against claims for necessaries the wages of the defendant up to $20 are exempt from such process. In actions on contracts where debt exceeds $13.33, defendant may be arrested on affidavit of plaintiff that he (defendant) has concealed his property or is about to leave the State to avoid payment of his debts. (*See Garnishment.*)

Banks. Banks can be chartered only by a special act of the legislature. Building and loan associations may be organized as voluntary associations. Once every year a thorough examination shall be made into the condition and management of every bank, building and loan association, and trust company in the State by one of the three bank commissioners. The commissioners shall on or before the 1st day of October, annually, file their report with the secretary of State. They shall give in their report a detailed statement of all the items of expense of each institution, with the names of the treasurer and clerks, the salary of each, with the kind and amount of stocks and bonds held by each, with the par value thereof, and the cost and the market value at the date of examination. The cashiers of every State bank, and every association or partnership formed for the purpose of transacting such business as is usually transacted by banks, shall, on the first Monday of March, June, September, and December in each year, make a statement of its condition on said day, specifying in separate columns the capital stock actually paid in; debts due the bank secured by pledge of its stock; value of real estate belonging to the bank; amount of debts due from directors; amount of specie in the vaults; amount of bills of other banks on hand; amount of deposits in the bank; amount on deposit in other banks for the redemption of its bills; and the amount of bills of the bank then in circulation; which statement shall be signed and sworn to by the cashier, and returned to the secretary of State. The trustees of savings banks shall make a thorough examination of the affairs of their respective banks once in every six months, and a report of such examination, signed by a committee of the trustees, shall be returned to the bank commissioners, and a copy of the report published in a newspaper published in the place where such bank is established; or, if there be no newspaper in such place, then in a newspaper at the nearest place. (*See Savings Banks Investments.*)

Bills of Lading. There has been no legislation on this subject. The common law obtains. Our courts have held that a bill of lading represents the property and is transferred by delivery merely, without regard to indorsement or word of negotiability.

Chattel Mortgages. (*See Mortgages.*)

Collateral. There have been no statutory enactments on this subject. Pledgee of stock is not liable as a stockholder, but the general owner is.

Contracts. All contracts made by a person under guardianship, or by a person alleged to be insane, or a spendthrift, after service of papers to secure guardianship, are void. All gambling contracts and contracts made on Sunday are void. In all contracts for labor ten hours labor shall be considered a day's work. The ancient law, known as the statute of frauds, is re-enacted on our statute books. Under that act all contracts for the sale of land shall be in writing; no action shall be brought to charge an administrator personally, nor to charge a person to answer the default of another, nor upon an agreement made in consideration of marriage, or that is to be performed in one year, unless such contract shall be in writing. No contract for the sale of goods for the price of $33 or upward shall be valid, unless the buyer shall accept and actually receive a part of the goods so sold, or give something in part payment to bind the bargain, or unless there be some note in writing signed by the party to be charged. No assignment of wages to be earned in the future shall be valid unless it shall be accepted in writing and a copy filed with the clerk of the town where the party making it resides.

Conveyances. Every deed and lease, for more than seven years, shall be signed, sealed, attested by two or more witnesses, acknowledged before a justice of the peace, notary public, or commissioner, and recorded in the registry of the county wherein the real estate is situated. Every power of attorney to convey real estate must be executed with the same formalities. Conditional conveyances must state the sum to be secured, or the thing to be performed. Administrators, guardians, and trustees can convey only by virtue of a license from the probate court. Sheriff's deeds shall give full particulars as to the action, and shall covenant that he has observed all the requirements of law.

Corporations. Corporations can be chartered by the legislature. Voluntary corporations can be formed for any purpose except banking, life insurance, and railroading. Five persons may associate themselves together under written articles of agreement, which articles shall set forth the corporate name, its object, place of business, and amount of capital, which may be anywhere from $1,000 to $1,000,000, with the par value of the shares at not less than $25 or more than $500. This agreement shall be recorded in the office of the secretary of State, and in the office of the clerk of the town where the business is to be carried on. Every corporation which shall not carry on its business in the State, obtaining a charter here, shall pay a charter fee as follows: $10 on a capital of less than $25,000; $25 on a capital between $25 000 and $100,000; $50 on a capital between $100,000 and $500,000; $100 on a capital between $500,000 and $1,000,000; and $200 where it exceeds $1,000,000. The said charter fee shall be paid when the articles are recorded. The clerk of every corporation shall be and continue a resident of the State. And at least one of the directors shall be an actual resident of the State, if the corporation has any stockholders resident in the State. No corporation shall sell or dispose of any of its stock at a price less than the par thereof. A note is not payment therefor. Cumulative voting is not permitted. Stockholders in all corporations, except banks and railroads, shall be liable for all the debts of the company until the capital is fully paid, and a certificate under the oath of the treasurer and a majority of the directors shall have been recorded with the town clerk. Every corporation, except banks, railroads, and insurance companies, shall annually, in May, return a sworn report, signed by the treasurer and a majority of the directors, of its assets, liabilities, and any assessments, which report, shall be recorded in the office of the secretary of State. A failure to make such return renders the officers personally liable for all the company debts.

Courts. The supreme court has original jurisdiction over all causes. It holds law terms in June and December, at Concord, when questions of law are determined, upon cases transferred from the trial terms, upon bills of exceptions. Probate courts have jurisdiction over estates of deceased persons, insolvent estates, minors, insane persons, adoptions, change of names, trustees, and partition of real estate. Police courts and justices of the peace have concurrent jurisdiction with the supreme court up to $100 when the title to real estate is not involved, and can render judgment upon confession up to $200. The terms of the supreme court in the several counties are as follows: Rockingham—at Exeter, on the third Tuesday of January and the second Tuesday of April; at Portsmouth, on the third Tuesday of October. Strafford—at Dover, on the second Tuesday of February and on the first Tuesday of September. Belknap—at Laconia, on the fourth Tuesdays of March and September. Carroll—at Ossipee, on the third Tuesdays of April and October. Merrimack—at Concord, on the first Tuesdays of April and October. Hillsborough—at Manchester, on the first Tuesdays of January and May—at Nashua on the third Tuesday of September. Cheshire—at Keene, on the first Tuesday of April and the third Tuesday of October. Sullivan—at Newport, on the first Tuesday of May and the first Tuesday of November. Grafton, eastern district—at Plymouth, on the second Tuesdays of May and November. Grafton, western district—at Haverhill, on the third Tuesdays of March and September. Coos, northern district—at Colebrook, on the first Tuesdays of February and September. Coos, southern district—at Lancaster, on the third Tuesdays of April and October.

Days of Grace. None except on sight drafts.

Deeds of Trust. No trust concerning lands shall be created, except by an instrument signed by the party creating the same, and in other respects conforming to the statutes concerning conveyances.

Depositions. The party proposing to take depositions shall give the opposite party a four days' notice, of which the following is a form:

"To A. B. C., of etc., or ....., att'y of record: Depositions will be taken at the office of ....., in ....., in the County of ... ., and State of ....., on the .... day of ....., 19.., at .... o'clock in the ..... noon, in which action ..... is plff, and ..... is deft., to be heard and tried at the ..... Court to be holden at ... ., in the County of ...., on the .... day of ....., 19... Dated at ..... this .... day of ....., 19...

....., Justice of the Peace."

One extra day's notice to be given, up to twenty days, for each twenty additional miles. They are taken before a justice of the peace or a commissioner. They can only be taken by written questions and answers proposed by counsel and administered by the magistrate. Objections are minuted on the deposition by the magistrate, but he does not pass upon the validity of such objections. Depositions shall be signed by the deponent, and he shall be sworn to testify to the truth, the whole truth, and nothing but the truth. They must be enclosed in an envelope and sealed up by the magistrate, with the following endorsement:

"To the Supreme Court.
Enclosed is the deposition of————————to be used in the action of————————vs.————————.

Sealed up by me————————
Justice of the Peace."

They should then be mailed to the clerk of the court where they are to be used. No deposition can be used in a jury trial unless taken before the Tuesday next preceding the Tuesday on which the term commenced.

A copy of this notice with the affidavit of service must be annexed to the deposition. The following is a form for the captlon of the deposition:

"State of..... } ss.
County of..... }

Personally appeared before me, a Justice of the Peace within and for said County, the within named ....., on the .... day of ....., 19.., at .... o'clock in the . .....noon, at the office of ....., ... S'reet, in ... ..., in said County, and made oath that the annexed deposition by him subscribed contains the truth, the whole truth, and nothing but the truth relative to the cause for which it was taken. Said deposition is taken at the request of ..... of .... , to be used in the ..... Court, in an action now pending (or to be entered) in said Court, wherein of, etc. is plff. and of, etc. is deft. The taking of the said deposition was begun at .... o'clock in the . .....noon of said day, and was continued until finished. The said .... was (not) present and did (not) object.

Dated at said ..... this ...., day of ...., 19...

....., Justice of the Peace."

Descent of Property. The real estate subject to dower or curtesy and homestead shall descend in equal shares as follows: 1. To the children and to the legal representatives of such of them as are dead. 2. If there be no issue, to the father, if he is living. 3. If there be no issue or father, in equal shares to the mother and to the brothers and sisters or their representatives. 4. To the next of kin in equal shares. If a person dies under age, his estate, derived by descent or devise from his father or mother, shall descend to his brothers and sisters, or their representatives, if any, to the exclusion of the other parent. No representation allowed beyond the degree of brothers' and sisters' children. The personal estate shall be distributed as follows: 1. To the widow, her share according to law. 2. To the same persons who would take as in the case of realty. The widow is entitled, in addition to her dower and homestead, to one-third or one-half of the personalty, as the husband does, or does not leave issue surviving, and she holds the same interest in the real estate, by releasing her dower and homestead, and by waiving any provision in the will in her favor. A surviving husband has the same rights in his wife's estate that a wife would have in her husband's estate. (*See Dower.*)

Divorce. The jurisdiction of the court shall be confined to actions commenced: 1. Where both parties were domiciled within the State when the action commenced. 2. Where the plaintiff was so domiciled, and the defendant was served personally with process within the State. 3. Where one of the parties was so domiciled, and one or the other resided within the State for one year next preceding the beginning of the action. The causes for divorce are as follows: 1. Impotency. 2. Adultery. 3. Extreme cruelty. 4. Conviction of crime and imprisonment for more than one year. 5. Conduct endangering health. 6. Conduct endangering reason. 7. Three years continuous absence. 8. Habitual drunkenness for three years continuously. 9. Religious profession of belief in the unlawful relation of husband and wife, and six months' refusal to cohabit. 10. Abandonment and non-cohabitation for three years continuously. 11. Non-support for three years continuously. 12. Wife's willful absence for three years without consent. 13. Same offense by the husband.

Dower. A widow is entitled to dower in the real estate of which her husband died seized, excepting in land not under cultivation or in a wood lot not used in connection with a farm. The dower may be assigned by metes and bounds, and the widow has an undivided net third part of the rents and profits until dower is assigned. She may be endowed with so much of the real estate of her late husband as will produce a yearly income equal to one-third of the total income.

Executions may be taken twenty-four hours after judgment, and are returnable before justice's and police courts in sixty days: before supreme court, at the next trial term of court. Writ of possession issued sixty days after judgment. A review may be granted by the court when injustice appears to have been done through accident, mistake, or misfortune. Real property taken under execution may be redeemed within one year.

Exemptions. Homestead to the value of $500; necessary apparel and bedding and household furniture to the value of $100; bibles and school books in use in the family, library to the value of $200; one cow, one hog, and one pig, and pork of same when slaughtered; tools of occupation to the value of $100; six sheep and their fleeces, one cooking stove and its furniture, provisions and fuel to the value of $50, and one sewing machine; one yoke of oxen, or a horse, when required for actual use; domestic fowls not exceeding $50; one pew, one lot in a cemetery, and hay not exceeding four tons.

Fraud. Aside from criminal frauds, the supreme court, in the exercise of its equity functions, has jurisdiction over frauds. (For the provisions of the statute of frauds and perjuries, see *Contracts.*)

Garnishment. Known to our law as trusteeing. Any personal action except trespass, defamation of character, and malicious prosecution, may be begun by trustee process. Trustees are not chargeable upon default. Wages earned after the service of the writ are not held by the process. Twenty dollars in wages are exempt as against all claims except for necessaries.

Holidays. (*See table, page* 13.)

Husband and Wife. They may make antenuptial agreements which can be in lieu of dower, homestead, and distributive share. (*See Arrest, Alien, Descent of Property, Dower, Divorce, Married Women, and Wills.*)

Interest. At the rate of 6 per cent per annum. If any person, upon any contract, receives interest at a higher rate than 6 per cent, he forfeits three times the excess to the person aggrieved and suing therefor; but no contract is invalidated by reason of any stipulation for usurious interest; the money actually advanced may be recovered with legal interest. Interest upon all judgments is at the rate of 6 per cent per annum. Interest upon unpaid taxes is at the rate of 10 per cent after the first day of December following their assessment, until sale of property taxed, and 12 per cent thereafter until time of redemption. Upon current accounts interest commences from date of demand for payment, unless controlled by the custom of trade, which is a question of fact to be determined by a trial thereof.

Judgments are not a lien upon real estate, except when attachment is made on the original process, when a lien exists for thirty days after judgment. Six per cent annual interest allowed on judgments. In actions on mortgages the judgment is conditional, that if the mortgagor pay the amount of the judgment within two months, the judgment shall be void. Judgments are rendered on the last day of the term of the court where the action has been disposed of.

Limitations of Suits. Accounts and simple promissory notes six years after maturity; judgments, sealed instruments, and notes secured by mortgage, twenty years. Time of debtor's absence from the State is excluded. Verbal acknowledgment and promise to pay is sufficient to revive the debt.

Married Women retain all property owned by them before marriage, or acquired afterward in any way except through property of the husband, to their sole and separate use, as if unmarried. All their contracts in relation to such property are valid and binding, and all their other contracts are binding, except those as sureties or guarantors for their husbands, or for and in behalf of their husbands. Upon the death of wife, the husband is entitled to substantially the same share of her estate as she would be of his estate in case of his death. They are liable for debts contracted while single, and their property may be attached to pay them. They are also liable for their torts before marriage in relation to their separate property. The husband is not liable for the wife's antenuptial debts, and can not convey his improved real estate so as to bar his wife's right of dower and homestead without her consent. Married women of the age of twenty-one years may dispose of their property by will, but not to affect husbands' rights, nor can they convey so as to deprive the husband of his right.

Mortgages. *Real Estate.* A conditional conveyance shall be ineffectual unless the sum to be paid, or the thing to be done, is stated in the conveyance. All mortgages shall be signed in the presence of two witnesses and acknowledged before a justice of the peace or a notary public. Mortgages may be foreclosed: 1. By entry under process of law into the premises and continued actual possession for one year. 2. By peaceable entry in the presence of two witnesses and continued actual possession for one year. The affidavits of entry shall be recorded and published in some newspaper published in the county. 3. By the mortgagee in possession taking formal possession under the second method. 4. By a sale under the provisions of a power of sale mortgage. *Mortgages of personal property,* to be effectual, the mortgagor and mortgagee must take and subscribe the following oath: "We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the condition thereof and for no other purpose whatever, and that said debt was not created for the purpose of enabling the mortgagor to execute the said mortgage, but is a just debt, honestly due and owing from the mortgagor to the mortgagee." The mortgage must be recorded in the office of the clerk of the town where the mortgagor resides, and in case of the non-residence of the mortgagor, it must be recorded in the office of the clerk of the town where the property is situated. The mortgagor may retain possession of the property. The mortgagor can not sell the mortgaged property unless the mortgagee consents in writing on the margin of the mortgage, which shall be recorded where the mortgage is recorded. The penalty of a sale without such consent is double the value of the property. A fine of $1,000 can be imposed if the mortgagor conceals the mortgaged property. Mortgages can be foreclosed by auction sale thirty days after maturity, by giving the mortgagor four days' notice of the time and place of the sale. The mortgagee may purchase at the sale. This law not applicable to furniture leases.

Notes and Bills of Exchange. No particular form of words necessary to constitute a negotiable promissory note. The words "value received" not essential. Bills of exchange must be absolute as to amount, event, fund, and person. No requirements as to place of payment. Demand notes must be protested within sixty days from day of their indorsement to hold indorsers. All paper, maturing on Sunday or any legal holiday, is payable on the next succeeding day, not being Sunday, and must be so noted.

Power of Attorney. (*See Conveyances.*)

Probate Law. The probate court is a county court, and holds numerous sessions in various places. Proceedings are begun by petition and citation issued. The citations are served twelve days before the return day. The court may proceed without notice in the following cases: In the probate of wills in the common form; in the appointment of an executor nominated in a will; in the appointment of appraisers of an estate; in licensing the sale of real estate under $200 in value, or where the heirs consent in writing; in appointing guardians and commissioners; in granting allowances; in assigning dower and homestead; in making orders for suits upon bonds; in changing names; in appointing trustees nominated in a will (*See Administration of Estates, Appeals, Courts, Descent of Property, Dower, Married Women, and Wills.*)

Protest. Notaries public are the proper protesting officers. Notice of the non-payment or the non-acceptance upon residents by mail is sufficient. (*See Notes and Bills.*)

Replevin may be brought to recover goods or chattels in specie. The question of right of possession being in issue, the plaintiff shall give bond to the sheriff in a sum not less than double the value of the property to be replevied, to pay such damages as may be awarded against him. If the defendant shall prevail he shall have judgment for the return of the goods, and other damages, or for their value.

Savings Bank Investments. Savings banks may invest as follows: First, in notes secured by first mortgages of New Hampshire real estate. Second, in notes secured by first mortgages of improved or occupied real estate. Third, in notes secured by collateral within certain limitations. Fourth, in notes secured by collateral of securities listed. Fifth, in indorsed notes, with certain limitations. Sixth, in public funds of the United States or the District of Columbia. Seventh, in State, county, town, or city bonds in New Hampshire. Eighth, in State bonds of States north of, and including, Maryland, Kentucky, Missouri, Kansas, Colorado, New Mexico, Arizona, and California. Ninth, in State and municipal bonds of such States, territories, or the municipalities within them, where the indebtedness does not exceed 5 per cent of the valuation, within certain limitations. Tenth, in New England railroad bonds, with certain restrictions. Eleventh, in steam railroad bonds of companies which operate their own roads, and which have paid at least 4 per cent dividends for five years next preceding. Twelfth, in corporation bonds where the debt does not exceed the capital. Thirteenth, in street railway bonds of a company operating in cities of 50,000 population or over, under certain conditions. Fourteenth, in New Hampshire bank stocks within certain limitations. Fifteenth, in national bank stock of banks of New England and New York. Sixteenth, in railroad stocks of most of the northeastern and central-northern States, which have earned and paid, at least a regular 4 per cent dividend for the past five years. Seventeenth, in manufacturing stocks of New England companies, which have earned and paid regular dividends for the past five years, and whose indebtedness does not exceed its capital. Eighteenth, in real estate suitable for banking purposes. Nineteenth, in real estate by lease which has been acquired

by foreclosure. Twentieth, may deposit its cash in any New Hampshire or Massachusetts bank, or in any New England or New York national bank.

Suits. (*See Actions.*)

Taxes become a lien upon the realty simultaneously with their assessment (April 1 of each year). One year from the day of sale is allowed in which to redeem land sold for taxes, costs of sale and interest at the rate of 12 per cent per annum being added.

Transfer of Corporation Stock. This may be done by a writing on the back of the certificate signed by the owner, or by a deed under seal, and the purchaser by a surrender thereof shall be entitled to a new certificate. The delivery of the certificate so endorsed transfers the title, but until the certificate is surrendered as aforesaid to the corporation, they may treat the old stockholder as the owner. No corporation can make a by-law restraining the free sale of its shares of stock. Persons holding stock as collateral are not liable as stockholder, but the pledger is liable.

Wills. Every person, including married women, of the age of twenty-one years, of sane mind, may dispose of their property by will. No will is effectual to pass property unless it is in writing, signed by the testator or by some person in his presence and by his express direction, and attested in his presence by three or more credible witnesses. Can be in type writing. A seal is not necessary. Foreign wills valid in the State where executed may be allowed here. Every child or grandchild, or every child born after the decease of the testator, shall be entitled to his distributive share in the estate, if not named in the will. A foreign will is proved here by the production of an authenticated copy thereof, together with an authenticated copy of the probate thereof.

SYNOPSIS OF THE LAWS OF NEW JERSEY

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by JEROME D. GEDNEY, Counselor at Law, East Orange. (*See Card in Attorneys' List.*)

Accounts and Claims, Proof of. For purposes of suit in justice's court, an affidavit may be made and annexed to copy of book account, and if no objection be made by defendant, or the hearing take place in his absence, the books of original entry need not be produced in evidence. The affidavit should show that the copy annexed is a true copy of the original entries; that all credits and allowances appear on the statement or that defendant is not entitled to any, and that the sum of money or balance shown by the account is justly due and owing to plaintiff. For use against estate of deceased person, or in assignment, or against insolvent corporation, an affidavit of a similar nature is *prima facie* evidence of the claim. The affidavit may be taken before any officer authorized by statute to administer oaths.

Acknowledgments of deeds are made within the State before the chancellor or a justice of the supreme court, a master in chancery, judge of the court of common pleas, commissioner of deeds, surrogate of county, or a deputy surrogate, or register of deeds, county clerk, or deputy county clerk during his continuance in office; without the State, before a justice of the supreme court of the United States, circuit or a district judge of the same, or a judge or justice of the supreme or superior court or chancellor of the State, district, or territory, or before any mayor or chief magistrate of any city, or before a judge of the court of common pleas or county court of such State, district, or territory, or commissioner for New Jersey, or by a master in chancery, or by any officer authorized at the time of such proof or acknowledgment, by the laws of the State wherein the same shall be made or taken, to take the acknowledgment of deeds of lands lying and being in such State. In case the acknowledgment is made before a mayor or chief magistrate, the certificate must be attested by the seal of the city; if before a judge of the court of common pleas or county court, or other officer, it must be attested by seal of such court, and certified by the clerk of the court. If before an officer not enumerated but authorized as above stated, it must be certified that he is such officer and authorized to take acknowledgments in the State in which the acknowledgment was taken. In foreign countries acknowledgment or proof may be made before a master in chancery, any court of law, notary public, mayor, or chief magistrate, or any ambassador, consul, consular agent, or other representative of the United States.

Actions which arise from breach of contract are entitled "upon contract"; for damages to person or property "in tort." The former covers the common law action assumpsit, covenant, debt; the latter, detinue, trespass, trespass on the case, trover. The actions of replevin and ejectment are not within the purview of the rule and are to be entitled as such.

Administration of Estates. Wills are proved before the ordinary of the State, or the surrogate of the county, and letters testamentary granted by the surrogate. In case there is no will, letters of administration are granted by him. Should there be a contest of the will or dispute as to the right of administration, the orphans' court has power to act. This court is also the proper tribunal for all disputes in matters of estates, is the auditor of all accounts, and has varied powers in matters regarding estates, such as the right to appoint trustees under a will, partition where minors are interested in lands, etc.

Affidavits in the State may be taken before the chancellor, judge of court of record, master in chancery, justice of the peace, mayor, recorder, or alderman of any city or borough, supreme court commissioner, city clerk, clerk or surrogate of any county, clerk of the court of record, notary public.

Aliens. No restrictions as to holding property. (*See Corporations.*)

Appeals. From justice's court to court of common pleas of county. From common pleas or circuit court to supreme court. From circuit or supreme court to court of errors and appeals. Except in first named chiefly by writ of error. From orphans' court to prerogative court. From prerogative court or court of chancery to court of errors and appeals.

Arbitrations may by the submission be made a rule of court, concluding the parties, by the award.

Arrests. In civil actions a debtor may be arrested under the following circumstances: 1. When he is about to remove any of his property out of the jurisdiction of the court in which an action is about to be commenced with intent to defraud creditors. 2. When the defendant has property or rights in action which he fraudulently conceals. 3. When he has assigned, removed, or disposed of, or is about to assign, remove, or dispose of, any of his property with intent to defraud creditors. 4. When he fraudulently contracted the debt in question.

Assignments and Insolvency. The insolvent laws provide for the discharge of a person under arrest for debt or damages on his delivering up all his real and personal property to his creditors. Assignments by debtors for the benefit of creditors must be without preference, and all others are void. Debtor must annex sworn inventory. Wages of servants, clerks, and laborers up to $300 each are preferred claims. Assignee must file list of creditors at the end of three months, and make dividends at the next term of court. Creditor not presenting claim does not share in the dividend, but retains his right of action against the debtor. Corporation may make assignment for the benefit of its creditors.

Attachment. A creditor may attach the property of a non resident or absconding debtor by making oath to the fact, and to the amount of his claim, before any officer authorized to administer oaths or affirmations. Attachments are for the benefit of all applying creditors, but the plaintiff or plaintiffs are to be first paid the amounts due him or them before division with other creditors. Debts not due may be proved under any attachment issued, and receive their pro rata dividend. No attachment can issue against the members of a copartnership, where one of them resides in the State, nor of the wages of a non-resident employe at the suit of a non-resident creditor. Garnishment can be effected only in attachment cases. Attachment where capias ad respondendum will issue in an action upon contract, an attachment will lie; awarded by court or a judge thereof, or supreme court commissioner upon affidavit filed as required to obtain capias ad respondendum. (*See Arrest.*)

Banks are incorporated under Special Act. Under certain conditions may purchase, hold, and convey real estate. Have the same general powers and are subject to the restrictions and liabilities contained in the general corporation act, so far as the same are applicable. Every bank shall make at least four reports each year to Commissioner of Banking and Insurance. These reports shall be published in newspaper where bank is located. Individual or private bankers are subject to the supervision and control of the Department of Banking and Insurance. (See P. L. 1899, p. 431.)

Bills of Lading and Promissory Notes. Regulated by principles of commercial law, chiefly. (*See Notes and Bills of Exchange.*)

Chattel Mortgages and Deeds of Trust. Chattel mortgages to be valid must be acknowledged as deeds and affidavit of the consideration must be made by the mortgagee. They must be recorded. In case household goods are mortgaged, the wife must also join. Deeds of trust in the sense of security for payment of money are not in ordinary use.

Collaterals. As security for loans, regulated by commercial law. Pledges of property to pawn brokers, regulated by statute.

Contracts. The following must be in writing: Leases for a longer term than three years. Assignments, grants, or surrender of leases. Declarations or creations of trust (does not interfere with implied or constructive trusts), grants and assignments of trusts. Special promise of executor or administrator to answer out of his own estate. Special promise to answer for the debt, default, or miscarriage of any other person. To charge any person upon any agreement made upon promise of marriage. Contract or sale of lands, tenements, or hereditaments or any interest in or concerning them. Any agreement not to be performed within one year of the making thereof. Contract for the sale of goods of the value of $30 or upward (acceptance of part of the goods or payment of part of the price obviates necessity of writing). Promise made after coming of age to pay debt contracted in infancy. Promise of bankrupt to pay after discharge. Commissions to broker or real estate agent, authority to sell must be in writing and rate of commissions stated. In case of debts fraudulently contracted, suit may be brought for recovery as soon as the fraud is discovered, notwithstanding debt may not be due.

Conveyances. Usually bargain and sale or warranty. Must be acknowledged to be recorded.

Corporations. *Powers.* Every corporation shall have power, 1st, to have succession by its corporate name for the period limited in its charter, and where no period is limited, perpetual; 2d, to sue and be sued in any court of law or equity; 3d, to make and use a common seal and alter the same at pleasure; 4th, to hold, purchase, and convey real and personal estate as purposes of corporation require and as shall have been conveyed or mortgaged to the said corporation in good faith, and to mortgage real and personal estate with its franchises; 5th, to appoint necessary officers and agents; 6th, to make by-laws; 7th, to wind up and dissolve itself. Corporations are formed under the general act; however, insurance, safe deposit or trust companies, banking corporations, savings banks, railroad companies, or turnpike companies, or such other companies which intend to derive profit from the loan or use of money, or which shall need to possess the right of taking or condemning land, must be incorporated under special act governing such companies. The certificate of incorporation shall be signed personally by all subscribers to the capital stock and set forth: 1. The name of the corporation. 2 The location of its principal office in the State. 3. The object or objects for which the corporation is formed. 4. The amount of the total authorized capital stock of the corporation, which shall not be less than $2,000, the number of shares into which same is divided, and the par value of each share. The amount of capital stock with which it shall commence business to be not less than $1,000, which may be paid either in cash or property, and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes with the terms on which the respective classes of stock are created. 5. The names and post-office address of incorporators and the number of shares subscribed for by each, the aggregate of which shall be the amount of capital stock with which the company will commence business, and shall be at least $1,000. 6. The period, if any, limited for the duration of the company. 7. The certificate of incorporation may also contain any provision as to the regulation of the business and conduct of the affairs of the corporation, and any provision creating, defining, limiting, and regulating powers of the corporation, the directors and the stockholders, or any class of stockholders, provided such provision be not inconsistent with the act concerning corporations. Every certificate and report must give address of New Jersey office and name of agent in charge thereof, upon whom process against the corporation may be served. Directors shall be stockholders, and shall be chosen annually by the stockholders. They must be three in number, at least. The officers are chosen annually; president must be a director. One director must be a resident of the State of New Jersey. When corporation is insolvent, remedy is by Bill in Chancery, the application for and appointment of receiver of such insolvent company. Laborers and workmen have first lien upon assets to a limited amount. Liability of the stockholder ceases when shares are fully paid for, or in other words, a stockholder is only liable to the amount of his unpaid subscription to the capital stock. Foreign corporations are subject to the provisions of the general corporation act in so far as the same are applicable; the provisions of which having been complied with, there is issued by the Secretary of State to such foreign corporations a certificate that it is authorized to transact business in this State. It is unlawful for a foreign corporation to transact business in this State until such certificate is obtained. A copy of the corporation law of the

State, with full forms and instructions for incorporating, is sent without expense by the Secretary of State, Trenton, N. J., upon application.

Courts. *Terms and Jurisdiction.* Circuit courts and courts of common pleas, holding three terms a year in each county, have jurisdiction in all civil cases, but to carry costs must recover at least $100, except that the court of common pleas has no jurisdiction where title to lands comes into question. The supreme court, holding three terms a year at Trenton, has also original jurisdiction in all cases, but must recover $200 to carry costs. Court of chancery has exclusive equity jurisdiction, and sits at Trenton three times a year. District court jurisdiction, co-extensive with county, in amounts $300 or under; justices' court jurisdiction co-extensive with county, in amount $200 or less. In cities where district courts are established and defendant or justice of the peace reside within the limits of said city the justices' court has no civil jurisdiction whatever. (See District Court Revision, P. L. 1898.) The court of errors and appeals has no original jurisdiction, but hears appeals from court of chancery, and prerogative court, and writs of error from supreme court and circuit courts.

Days of Grace. Abolished since July 4, 1895, unless stipulated to the contrary.

Depositions of material witness residing in the State, who is ancient, or very infirm, sick, or about to go out of the State, may be taken de bene esse before a judge of the supreme court, judge of the court of common pleas, supreme court commissioner, or master in chancery, on notice to adverse party. Of material witness residing out of the State by virtue of a commission issued out of the court before which the action is pending, either on interrogatories or orally upon notice. The commissioner must first take and sign an oath, "faithfully, fairly, and impartially to execute the said commission" before any officer authorized to take an oath. Such depositions may also be taken before a judge of the supreme court, or district court, or court of common pleas, commissioner of deeds appointed by the governor of the State of New Jersey resident where the witness is, on notice of one day, exclusive of Sunday, for every fifty miles of travel and not less than ten days in all. If the witness resides on the Pacific coast, the court fixes the length of notice. If in a foreign state or kingdom, not less than forty days' notice must be given. (See Jefferey's Law Precedents, p. 260, et seq., and Dickinson's Chancery Precedents, p. 217, et seq., for forms and instructions.)

Descent and Distribution. Descent: 1. To children and grandchildren, and so on, that is, lineally, *ad infinitum*. 2. In default of class 1, to brothers and sisters of the whole blood, and their issue. 3. In default of classes 1 and 2, to the father, unless the inheritance came from the mother by descent, devise, or gift. 4. In default of classes 1, 2, and 3, to the mother for life. 5. In default of the former classes, to the brothers and sisters of the half blood and children of such, provided the inheritance came from the common blood or by purchase. 6. In default of all of these to the persons of equal degree of consanguinity. 7. In default of all above classes, to the husband or wife, if any, in fee simple. Escheat to State after all above claims are exhausted. Distribution: 1. One-third to widow, residue to children and legal representatives of such children. Advancements and settlements are to be deducted from share of child so advanced or receiving settlement. 2. If no children or legal representative, one-half to widow, residue to next of kin. 3. If no widow, to the children equally, and if no children then to next of kin and legal representatives. 4. If father be dead and child die without widow or children in lifetime of mother, every brother and sister and representatives shall have equal share with mother. 5. If mother of illegitimate child or children die without leaving husband or lawful issue then illegitimate child shall take her estate. 6. The estate of illegitimate child dying without widow or lawful issue shall go to mother. 7. Where person has died intestate, leaving widow but no kindred or relatives capable of taking estate, and the estate be undistributed, it is now given in full to widow of such intestate. 8. The estate of person dying without leaving widow or kindred or relatives, after one year shall be put out at interest and income paid annually to Treasurer of city or township. Seven years after decease all claims are barred.

Divorce. Court of chancery has jurisdiction. Causes: Former husband or wife living. Parties within the degrees prohibited by law. Adultery. Willful, continued, and obstinate desertion for two years. Impotence. From bed and board for extreme cruelty.

Dower. Widow entitled to one-third for life of all the lands of which her husband was seized during coverture, for which she has given no relinquishment or release by deed, properly executed and acknowledged. (*See Descent and Distribution.*)

Executions issue immediately upon a rendition of judgment, and are returnable either in term or vacation. An execution and levy upon a junior judgment takes priority over a former judgment under which no execution and levy has been made. The proceeds are applied to the payment of the execution upon which the sale is had. There is no stay of execution, except on those which are issued out of justice's courts. In these courts thirty days are allowed on sums up to $15; three months up to $60, and six months on all sums over $60, and this only case of judgment by confession and defendant giving good and sufficient freehold security. There is no redemption after sale in any case. Where executions have been returned unsatisfied, if the sum due on a judgment amounts to $25 or upward, the court out of which said executions issued may, on application of the judgment creditor, make an order compelling the debtor to appear before the officer named and make discovery on oath concerning his property. The judgment creditor shall present to the court a petition verified by oath, in which he shall state the amount due on said execution, the return made, and his belief that the debtor has property in his own right over and above that which is reserved by law to an amount exceeding $50. Arrest on a capias can only be had in case of fraud or attempted removal or disposal of property with intent to defraud creditors.

Exemptions. The lot and building thereon, owned and occupied by the debtor, being the head of a family, to the value of $1,000, providing that in the debtor's deed it is set out that the property is intended for a homestead, or else that notice to such effect is filed in the county clerk's office. Personal property to the amount of $200, besides wearing apparel, owned by a resident head of a family, appraised by three persons appointed by the sheriff; and the widow or family of a deceased person may claim the same exemption of $200 as against the creditors. Family of absconding debtor may claim exemption of $200 as above.

Frauds. (*See Contracts.*)

Garnishment. (*See Attachment.*)

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. (*See Married Women.*)

Interest. Legal interest on debts and judgments, 6 per cent. Usury is punishable by forfeiture of all interest and costs. Interest on an open account accrues on each item from its date, as at common law.

Judgments become a lien on lands from time of actual entry, and so remain for twenty years. Where there are several judgments, that under which the first levy is made takes priority. Judgments recovered or docketed in the supreme court are a lien on all lands of defendant within the State.

Limitations of Suits. Contracts not under seal, six years; real actions and judgments, twenty years; notes secured by mortgage and contracts under seal, sixteen years. Revivor: Part payment or new promise or acknowledgment in writing.

Married Women hold and control their property, real and personal, precisely as if unmarried. But a married woman can not become an accommodation indorser, guarantor, or surety, except under certain conditions. (See P. L. 1895, p. 821.) She cannot convey or incumber real estate without her husband, except she is living in a state of separation from her husband, and there has been no issue of such marriage, or her husband is unable to join through lunacy or other mental incapacity, or in case an assent to the same has been signed and acknowledged by the husband. A married woman may make a will of her separate estate as if she were sole, but can not defeat her husband's interest in her real estate, although she can make absolute disposition of her own private personal property without regard to her husband. (*See Dower.*)

Mortgages must be under seal, and the wife must join. Foreclosure is by suit in equity. Chattel mortgages, unless accompanied by immediate delivery and followed by continued change of possession of things mortgaged, are absolutely void as against creditors and subsequent bona fide purchasers and mortgagees, unless said mortgage has been acknowledged or proved according to law, and recorded in a book for that purpose. Chattel mortgages must have an affidavit annexed, setting out the interest of the mortgagee, consideration of the mortgage, and the amount due and to grow due thereon; said affidavit to be made by the holder, or his agent or attorney. Chattel mortgages upon household furniture in the use of the family, unless given for the purchase thereof, must be executed and acknowledged by both husband and wife.

Notes and Bills of Exchange. Promissory notes, bills of exchange, checks and drafts, are on the same footing. May or may not be payable at fixed place. Due diligence must be used to find the maker, if no place is stated. Inland bills of exchange are, in general, subject to the law of foreign bills; they must be protested. After July 4, 1895, grace not allowed. The action required to hold indorser is the same as under the general mercantile law. Drafts and notes due on a legal holiday are payable the day after such holiday, and notice of non-payment may be given within twenty-four hours later. If the legal holiday should fall upon a Sunday or Monday, bills are payable on Tuesday, and notice may be given on Wednesday. Legal holidays are: January 1st, commonly called New Year's Day; February 12th, called Lincoln's Birthday; February 22d, known as Washington's Birthday; May 30th, known as Decoration Day; July 4th, called Independence day; first Monday of September, known as Labor Day; December 25th, known as Christmas day; Thanksgiving Day, and any general election day. If any of these days happen on Sunday the holiday is kept Monday. Every Saturday from 12 o'clock at noon to 12 o'clock at midnight is a half-holiday, with same provision as to payment of notes.

Powers of Attorney for sale of land in which married woman joins, must contain a full and particular description of the lands, tenements, or hereditaments authorized to be conveyed.

Probate Law. (*See Administration of Estates and Wills.*)

Protest. (*See Notes and Bills of Exchange.*)

Replevin requires bond from party issuing the writ. Officer holds for twenty-four hours, during which defendant may give bond and retain the goods, when the case proceeds for damages. If no bond is given, goods are delivered to plaintiff.

Suits are commenced by writs of summons, capias, warrant, or attachment. Service by publication may be made in equity only, and in common law courts, in case of a foreign corporation, if service can not be made on officers or agents, directors, clerks or engineers.

Taxes are a lien for two years from the time they become payable, and lands may be sold for taxes delinquent six months. There is a right to redemption for two years after the time of sale.

Transfer of Corporation Stocks. Shares of stock are personal property, transferable on books, but cannot be voted on if transferred twenty days before election.

Wills. There are four requisites to make a valid will in this State. They are: 1. That it be in writing. 2. That it be signed by the testator 3. That such signature shall be made by the testator, or the making thereof acknowledged by him in the presence of two witnesses, who shall at his request sign their names as such in the presence of the testator and of each other. 4. That it shall be declared to be his last will in the presence of these witnesses. Sealing is customary.

SYNOPSIS OF THE LAWS OF NEW MEXICO

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. Johnston & Finical, Attorneys at Law, Albuquerque. (*See Card in Attorneys' List.*)

Accounts and Claims, Proof of. Claims are proved either by depositions, or by oral testimony, in open court. Accounts sworn to as correct by the party or his agent, promissory notes and other written instruments promising to pay money, are sufficient evidence to secure a judgment, unless the defendant denies the same under his oath, when other additional testimony must be produced. The affidavit to account must be filed at the commencement of action or may be filed in the discretion of judge not later than ten days before the date set for trial. If copy of account is demanded by adverse party he must be served with copy within ten days or evidence of same is precluded on trial.

Acknowledgments. (*See Conveyances.*)

Actions. The practice in this Territory is the code modified by rules of court. All civil actions in district courts are brought as follows: All transitory actions shall be brought in the county where either the plaintiff, or defendant, or some one of them, resides, or in the county where the contract sued on was made, or is to be performed, or where the cause of action originated, or indebtedness sued on was incurred; or in any county in which the defendant, or either of them, may be found, in the judicial district where the defendant resides. When the defendant has rendered himself liable to a civil action by any criminal act, suit may be instituted against such defendant in the county in which the offense was committed, or in which the defendant may be found, or

in the county where the plaintiff resides. When suit is brought for the recovery of personal property, other than money, it may be brought as herein stated, or in the county where the property may be found. When lands, or any interest in lands, are the object of any suit, in whole or in part, such suit shall be brought in the county where the land, or any portion thereof, is situated. Suits for trespass on land shall be brought as provided for in transitory actions, or in the county where the land, or any portion thereof, is situate. Suits may be brought against transient persons or non-residents in any county of this Territory.

Administration of Estates. Letters of administration are granted in the county in which the mansion, house, or place of abode of the deceased is situated, or in the county in which lands of the decedent are located, and in the absence of all these, in the county where the deceased died. Letters are granted, first, to the husband or wife surviving; secondly, to any creditor thirty days after the death; thirdly, the probate judge may select a suitable person. The probate court has exclusive jurisdiction, and from all its acts an appeal lies to the district court. (*See Claims against Estates.*)

Affidavits. Affidavits to be used in court may be taken before any person authorized to take acknowledgments.

Aliens. By statute of the Territory, foreigners have the same right to own and dispose of real estate that citizens of this country enjoy, and property descends to their heirs and is controlled by their executors and administrators in precisely the same way.

Appeals. From justice courts lie to the district courts, and must be taken within ten days after rendition of judgment, but no appeal shall be allowed unless the appellant or some person for him shall—1. Make affidavit that the application for appeal is not made for vexation or delay, but because he believes the appellant is injured by the judgment of the justice; 2. File with the justice a bond with one or more solvent sureties to the adverse party, to be proved by the justice, in a suit sufficient to pay such judgment and costs. Appeals from judgments of probate court are to the district court, and must be taken at the same term at which judgment or decision appealed from was rendered, in which an affidavit and bond are also required. Appeals from judgments of district courts are taken to the supreme court. The appeal or writ of error must be taken within one year from the date on which the judgment or decision was rendered, and in order that such an appeal shall stay execution, the apellant or some responsible person for him, together with two sufficient sureties to be approved by the court, shall execute a bond to the adverse party in double the amount of the judgment and costs, conditioned that the appellant shall prosecute his appeal with diligence to judgment in the appellate court, and pay all costs and damages assessed against him, etc. Writs of error upon any final judgment or decision of a district court, issue, as of course, out of the supreme court to review such judgment or decision within one year after rendition of same. Appeals from the decision of the supreme court are direct to the Supreme Court of the United States, or Circuit Court of Appeals of the United States, in such cases as are provided for by law.

Arbitration. All litigants shall have the right to terminate their suits, in whatever condition they may be, by means of arbitrators. The arbitrators shall enter into an agreement (the form for which is provided by statute) to submit their differences to arbitration, and the arbitrators shall receive proofs and hear arguments of counsel, and render sentence as the majority of the arbitrators may decide, and any of the courts will enforce the decision of the arbitrators by issuing execution thereon.

Arrest. Any creditor whose demand amounts to $50 or more, may sue out a writ of capias in the district court by filing an affidavit, stating that the defendant is justly indebted to him, after allowing all setoffs, in a sum specified in the affidavit, and on what account; that the affiant has reason to believe, and does believe, that the defendant is about to abscond from this Territory, so as to endanger the collection of his debt; and by also filing a bond as is required in attachments. Justices may issue the writ upon the same conditions, where the debt is less than $50.

Assignments. Under Chapter 67, laws of 1889, insolvent debtors may make assignments for the benefit of their creditors. No preferences are allowed, but the assignment inures to the benefit of creditors generally, pro rata. The court may upon proper application compel the assignee to surrender the property to a receiver to be appointed by the court. The claims of creditors to be verified by the oath of the creditor, his agent, or attorney. Assignee is required to settle up the estate within twelve months.

Attachment. Creditors whose demands amount to $100 or more may sue their debtors in the district court, by attachment in the following cases, to wit: 1. When the debtor is not a resident of nor resides in the Territory. 2. When the debtor has concealed himself, or absconded, or absented himself from his usual place of abode in this Territory, so that the ordinary process of law can not be passed upon him. 3. When the debtor is about to move his property or effects out of this Territory, or has fraudulently concealed or disposed of his property or effects, so as to defraud, hinder, or delay his creditors. 4. When the debtor is about to fraudulently convey or assign, conceal, or dispose of his property or effects, so as to hinder, delay or defraud his creditors. 5. When the debt was contracted out of this Territory, and the debtor has absconded or secretly removed his property or effects into the Territory with intent to hinder, delay or defraud his creditors. 6. When defendant is a corporation whose principal office or place of business is out of this Territory, unless such corporation shall have a designated agent in the Territory, upon whom service of process may be made in suits against the corporation. 7. When the defendant fraudulently contracted the debt, or incurred the obligation, respecting which the suit is brought, or obtained credit from the plaintiff by false pretenses. An attachment may issue upon a demand not yet due, in any case where an attachment is authorized, in the same manner as upon demands already due. The attaching creditor must file with the clerk of the court a bond with two or more sureties in double the amount of the claim, and an affidavit sworn to by plaintiff or some person for him, setting out the amount of the claim, that it is due after allowing all just credits and offsets, and on what account; and that affiant has good reason to believe, and does believe, in one or more of the causes for attachment hereinbefore set forth. Any person having property or effects of defendant in his hands may be garnisheed. The attachment may be dissolved by denying and successfully contesting the truth of the ground of attachment specified in the affidavit, and then the suit proceeds as an ordinary action.

Banks. By an act of legislative assembly any number of persons not less than three, may associate to establish a bank; the capital stock shall not be less than $30,000, of which, at least, 50 per cent shall be paid in at once and before transacting any business, and the remainder be paid within a year; statements shall be sent to the Territorial treasurer of the condition of the bank on the first Monday in January and July, and be published at least once a week for three successive weeks in a newspaper of the county. The officers and stockholders of every bank formed under the provisions of the act shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation, equally and ratably, to the extent of their respective shares, except that when any stockholder shall sell and transfer his stock, such liability shall cease at the expiration of one year from the date of such transfer. It is also provided, however, that the stockholders, collectively of any bank, shall at no time be liable to such bank, either as principal debtors, or sureties, or both, to an amount greater than two-fifths of the amount of the capital stock actually paid in and remaining undiminished by losses or otherwise.

Bill of Lading. Every railroad company doing business in the Territory must provide bills of lading, which must be signed by the agent of the company receiving freight, embodying therein the terms of the contract for carriage, and agents may require the surrender of the bill of lading, or a reasonable indemnity against claims thereon, before delivering the freight therein mentioned.

Bills and Notes are assignable as at common law, and the assignee thereof can bring suit in his own name. On a joint and several note, any one of the makers may be sued. Indorsers are subject to the same liabilities as at common law. Interest is limited by statute to 12 per cent per annum. Days of grace are allowed. Commercial paper falling due on Sunday or any legal holiday is, under statute, payable on the next business day thereafter.

Building and Loan Associations. *Foreign.* By statute of 1899 foreign building and loan associations are subjected to heavy license fees to authorize them to do business in the Territory, and violations of the act are punishable by fine of not more than $1,000.

Chattel Mortgages. Chattel mortgages and all instruments of like effect must be acknowledged and recorded as deeds. In the absence of stipulation to the contrary mortgagor has right of possession. Every mortgage so filed for record is void as against creditors, subsequent purchasers and mortgagees, after the expiration of one year from the filing thereof, unless within the thirty days next preceding the expiration of one year from said filing and each year thereafter, said mortgage be continued by affidavit of mortgagee, his agent or attorney, filed with mortgagee, showing interest of mortgage and amount still due.

Claims against Estates. The same proofs are required as in other claims in other courts. Generally the affidavit of the creditor is accepted by the probate judge as sufficient, if there be no objection from any source. Such claims if not presented for settlement within two years from the date of death of deceased are barred, and no suit or proceeding commenced thereafter on such claim can be maintained. Claims are usually classified and paid as follows: 1. Funeral expenses and expenses of last sickness. 2. Allowance for maintenance of widow and children. 3. Claims entitled to preference by express provision of the laws of the United States or of this Territory. 4. Taxes. 5. All other debts. 6. Legacies.

Contracts. All contracts which at common law were joint, are by statute joint and several, and parties liable may be sued jointly or severally, including the separate members of a firm.

Conveyances. All conveyances of real estate shall be subscribed by the person transferring his title or interest in said real estate, or by his legal agent or attorney. Every instrument in writing, by which real estate is transferred or affected, in law or equity, shall be acknowledged and certified to in the manner hereinafter prescribed. The acknowledgment of all conveyances or writing affecting any real estate, in law or equity, shall be taken before any of the following named officers: If the acknowledgment is made within the Territory it shall be made before any court having a seal; if by any judge, justice of the peace, or clerk, in the same manner, or by any justice of the peace of the same county wherein the said real estate is situated. If taken within the Territory and within the United States, the acknowledgment to be taken before any United States Court, or the court of any State or Territory within the United States having a seal, or by any clerk of any of said courts. If acknowledged beyond the limit of the United States, it shall be done before any court of any State, kingdom or empire having a seal, or by the magistrate or supreme power of any city who may have a seal. No acknowledgment of any writing purporting to be a conveyance of real estate, or by which the same may be affected in law or equity, shall be taken, unless the person offering to make the same be personally known to at least one of the judges of the court, or to the officer taking the same, to be the person whose name is subscribed to said writing, or is proved to be the person by the testimony of two reliable witnesses. The certificate of acknowledgment shall express the fact of the acknowledgment being made, and also that the person making the same be personally known to at least one of the judges of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the writing, or a party to it, or that it was proved to be such person by the testimony of at least two reliable witnesses. By statute of 1899 the husband can convey the real estate belonging to him without the consent or signature of his wife.

Corporations. By act of congress, approved March 2, 1867, legislative assemblies of the several Territories were prohibited from granting charters of especial privileges, but were authorized to pass general incorporation acts to permit persons to associate themselves together as bodies corporate for certain purposes named. Any three or more persons may form a corporation for mining, manufacturing, or other industrial pursuits, or the construction and operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith; or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association. To do so they must make, sign, and acknowledge—before some officer competent to take the acknowledgment of deeds—a statement in writing (for the filing of which the Territory is entitled to graduated fees), setting forth the full names of such persons; the corporate name of the company; the objects for which it is formed; the amount of its capital stock; the time of its existence, not exceeding fifty years; the number of shares into which the capital stock is divided; the number of directors and their names, who shall manage the affairs of the company for the first three months, and the name of the city, or town and county in which the principal place of business of the company is located. There shall be at least three directors in each company, and a majority of them citizens of the United States, and at least one-third residents of the Territory. And after the expiration of the term of those first selected (three months), they shall be selected annually by the stockholders from among their number. A majority of the whole number of directors form a quorum for the transaction of the business. When the certificate has been filed the life of the corporation begins, with all the usual liabilities and powers. The stock of the corporation is personal estate. There is no personal liabilities upon stockholders, except where debts are incurred in excess of the capital stock. The stock of a stockholder may be taken on attachment or execution. The capital stock may be increased or diminished by a vote of two-thirds of the shares of stock at a meeting of the stockholders, called for that purpose, upon four weeks' notice, signed by a majority of the directors. Foreign corporations, or those organized under the laws of other States and Territories, may do business in this Territory by filing with the secretary and probate clerk of county a copy of the laws under which they are chartered, and a certified copy of their charter. Railroad corporations come under a separate head with peculiar privileges and restrictions.

Costs. Security for costs or a deposit of money in lieu thereof, is required of non-resident plaintiffs, at the time of commencing suit.

Courts. District courts hold two terms a year in all the counties, and have unlimited common law and chancery and jurisdiction. There are probate courts with the usual powers, holding six terms a year.

Days of Grace. (*See Bills and Notes.*)

Deeds. (*See Conveyances.*)

Depositions. Depositions of witnesses to be used in any court in this Territory in all civil cases, and proceedings may be taken in the following cases: 1. When by reason of age, infirmity, sickness or official duty it is probable that the witness will be unable to attend the court. 2. When the witness resides without the Territory or the county in which the suit is pending. 3. When the witness has left or is about to leave the Territory or county in which the suit is pending, and will probably not be present at the trial. Depositions may be taken on interrogatories and cross interrogatories attached to a commission to be issued by the clerk of the court or justice of the peace, and may be taken within the Territory by a district judge, clerk of district court, clerk of probate court or any notary public of the county where taken. They may be taken without the Territory by any clerk of a court of record having a seal, by a notary public or a commissioner of deeds duly appointed under the laws of this Territory, and residing within the State or Territory within which the witness is alleged to be or resides. The officer to whom the commission is addressed is authorized to issue subpoenas for witnesses, and upon their appearance, and take and reduce to writing their answers to the interrogatories, which shall be signed and sworn to by the witnesses. The officer shall certify that the answers were signed and sworn to by the witness before him and shall seal them up in an envelope together with the commission and interrogatories, and shall write his name across the seal, and shall direct the package to the clerk of the court or justice of the peace issuing the commission. If sent by mail the postmaster mailing the same shall indorse thereon that he received them from the officer taking the same, and sign his name. In every case the officer taking the deposition shall certify that he knows the witness to be the person such witness purports to be, but if such witness is not personally known to the officer he shall then require the witness to be identified by at least two responsible persons well known to the officer, and he shall certify to the fact of identification of the witness.

Descent and Distribution of Property. The property of intestates descends one-fourth to husband or wife and the balance to lineal descendants; in the absence of these, to the nearest ascendants; and in the absence of both, to the collateral relatives, and in each case in equal proportions. Males and females share alike.

Divorce. The grounds for divorce are: Adultery, cruel or inhuman treatment, abandonment, habitual drunkenness, and neglect on the part of the husband to support the wife. Complainants must prove residence in the Territory for one year before beginning suit. The district court has exclusive jurisdiction, and at least one corroborating witness is required.

Dower. All property owned by any woman at the time of her marriage, continues to be her separate property, and she may receive and hold property during coverture free from liability on account of her husband's debt. There is no dower in the Territory, but a married woman is entitled to one-half of all the property acquired by the husband and wife during coverture, first, however, deducting all indebtedness.

Evidence. No person shall be excluded from giving evidence in any suit on the ground of interest, and persons interested in any suit or issue as parties or otherwise may be required to testify. No person, however, shall be compelled to answer any questions when such answer would criminate or subject such person to prosecution or penalty. No person in a suit by or against the heirs, or executors, or assigns of a deceased person shall obtain a verdict, judgment, or decision on his own evidence, in respect to any matter occurring before the death of the deceased person, unless his evidence is corroborated by some other material evidence.

Executions. Executions may issue at any time within five years, and to any county in the Territory. From district courts are returnable in sixty days from delivery to sheriff, and from justices' courts within thirty days from date of issue. No stay of execution except by appeal. A writ of error will stay execution of a judgment in district court, if such writ is applied for within three months from date of rendition of judgment, and bond is given for double the amount of such judgment. The supreme court may assess 10 per cent damages where appeal is taken without reasonable cause. Real estate sold under execution, and subject to liens and incumbrances, may be redeemed within one year. Sales under execution must be advertised four weeks prior to day of sale, in some newspaper.

Executors and Administrators. Executors and administrators must render an account at the first term of the probate court, after one year from the issue of letters, and at the corresponding term of the court every year thereafter, until the estate is settled. Executors outside of New Mexico may have letters testamentary issued to them here by filing the will for probate in New Mexico and giving bond.

Exemptions. Real estate to the value of $1,000 shall be exempt from execution in favor of heads of families actually residing on the same, provided the exemption be claimed. But if in the opinion of the creditors the premises claimed as exempt are worth more than $1,000, it shall be lawful for the officer to advertise and sell the premises, and out of the proceeds of such sale pay to the execution debtor $1,000, which shall be exempt from execution for one year thereafter, and apply the balance to payment of execution, provided that no sale can be made unless more than $1,000 be bid for the premises. Also the clothing, beds, and bedclothing necessary for the use of the family; and firewood sufficient for sixty days, when actually provided and intended therefor. All Bibles, hymn-books, testaments, school books used by the family, and family and religious pictures. Provisions actually provided, to the amount of $50, and kitchen furniture and household furniture not exceeding $200 in value, both to be selected by the debtor. Also all tools and implements belonging to the debtor that may be necessary to enable him to carry on his trade or business, whether agricultural or mechanical, to be selected by him, and not to exceed $150 in value. Real estate when sold under execution must be first appraised by two freeholders of the vicinity, and must bring two-thirds of the appraised value.

Fraud. Fraudulent conveyances, or conveyances made with the design to prefer one or more creditors in preference to others, and, when the debtor is insolvent, may be set aside upon application by a bill in equity. (*See Assignments.*)

Garnishment. All persons and corporations are subject to garnishment for moneys of a debtor in their hands, and a failure of the garnishee to appear and answer, subjects the garnishee to a proceeding for contempt. (*See Attachments.*)

Holidays. Sundays, Christmas, New Years, Fourth of July, and such other days as may be designated by the government as holidays.

Homesteads. (*See Exemptions.*)

Husband and Wife. (*See Divorce and Dower.*)

Insolvent Laws. (*See Assignments.*)

Interest and Usury. Six per cent interest is the legal rate of interest in absence of contract, but parties may agree in writing for any rate of interest not exceeding 12 per cent. Open accounts bear interest at 6 per cent from six months after the date of last item in the account. Judgments bear the same interest as contract sued on, and in the absence of any specified rate, 6 per cent.

Judgments. Judgments are a lien on real estate within counties from date of filing transcript with the clerk of the probate court. (*See Executions.*)

Liens. Every person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of buildings, etc., has a lien upon the same for the work done, or for the materials furnished, but every original contractor claiming the benefit of the lien law must, within ninety days after the completion of any building, etc., file with the county recorder a claim showing the amount of his demand remaining due him, name of the person by whom he was employed, and a general statement of his contract; also a description of the property to be charged with the lien, which claim must be verified by the oath of the party or his agent. Landlords, innkeepers, and common carriers have the usual lien on property and baggage of tenants, guests, and shippers.

Limitations. Ten years' adverse possession of land under color of title bars all actions. Infants, *femmes covert*, persons of unsound mind, imprisoned, or beyond the limits of the United States, are not within this statute. All other actions must be brought as follows: Upon judgments of courts of record, within seven years; on bonds, promissory notes, bills of exchange, or other contracts in writing, and upon judgments of any court not of record, within six years; on open accounts and unwritten contracts, injuries to property, conversion of personal property, relief on account of fraud, within four years; against sureties on official bonds, and against sheriffs and public officers, within two years. Actions of replevin must be brought within one year after right of action accrued. Accounts against the estate of deceased persons must be presented within one year after the death of the deceased, and no action can be commenced after two years.

Married Women. (*See Dower.*) May sue and be sued as *femme sole*.

Mechanics' Liens. (*See Liens.*)

Mortgages of Personal Property. (*See Chattel Mortgages.*)

Mortgages of Real Property. There is no statute relating to mortgages on real estate, except that they must be executed and recorded in the same manner as deeds. Mortgages of chattels are provided for in the statute, and may be given on all kinds of personal property, except growing crops. Every mortgage so filed shall be void as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year after the filing thereof; unless within thirty days next preceding the expiration of the term of one year from such filing, and each year thereafter the mortgagee, his agent, his attorney, shall make an affidavit exhibiting the interest of the mortgagee in the property at the time last aforesaid, claimed by virtue of said mortgage, and if said mortgage is to secure the payment of money, the amount yet due and unpaid; such affidavit shall be attached to and filed with the instrument or copy on file, to which it related. In the absence of a stipulation to the contrary, the mortgagor of personal property has the right to the possession thereof. After condition broken the mortgagee or his assignee may proceed to sell the mortgaged property, or so much thereof as shall be necessary to satisfy the mortgage and cost of sale, having first given notice of the time and place of sale, by written or printed hand-bills posted up in at least four public places in the township in which the property is to be sold, at least ten days previous to the day of sale. If the mortgagee or his assignee shall have obtained possession of the mortgaged property, either before or after condition broken, the mortgagor or any subsequent mortgagee may demand in writing a sale of such property, having first given notice as provided for above. If after satisfying the mortgage and costs of sale there shall be any surplus remaining, the same shall be paid to any subsequent mortgagee entitled thereto, or to the mortgagor or his assignee. The husband may mortgage his real estate without the consent or signature of his wife. (*See Conveyances.*)

Notes and Bills of Exchange. (*See Bills and Notes.*)

Practice. The legislature of 1897 abolished the common law forms of procedure and adopted the code. The common law rules of decision govern.

Protest. Any notary public may make protest of bills of exchange, acceptances, promissory notes, etc., for non-payment. The certificate of a notary, under his official seal, as to presentment, demand, non-payment, or non-acceptance, and notices to parties, shall be prima facie evidence of the facts certified to.

Records. (*See Conveyances.*)

Redemption. Real estate sold under execution may be redeemed by the execution debtor within one year, by paying to the purchaser the purchase money with interest thereon at 12 per cent. Real estate sold for taxes may be redeemed within three years, but the debtor shall pay interest at three per cent per month on the purchase money. The purchaser under execution is entitled to the growing crops, and the rents and profits.

Replevin. Any person entitled to the immediate possession of personal property may have a writ of replevin for the same, upon filing an affidavit that he is entitled to the immediate possession of the property, that the same was wrongfully taken or is wrongfully detained by the defendant, and that the plaintiff's right of action accrued within one year. Before the writ is served, plaintiff must give bond to the officer conditioned to hold him harmless, make return of the property, if a return be adjudged and pay all costs that may be adjudged against him, the affidavit to be made and bond executed by the plaintiff, or some responsible person for him. If the plaintiff fail in his action, or to prosecute the same, defendant is entitled to a return of the property, or its value at his option, and to double damages for the detention of the property.

Stay of Execution. (*See Executions.*)

Summons. The defendant must be served with a copy of summons at least five full days before the first day of the term, when he is summoned in the county where action is brought. When he is served out of the county, but within the judicial district fifteen full days must elapse. And if action is brought in any judicial district other than that in which the defendants, or either of them, reside, then thirty days must elapse. The courts of the Territory are at all times in session for the transaction of all business except jury trials. Defendant must appear within twenty days of service of summons if served in any county in the district, otherwise within thirty days, or judgment by default or decree *pro confesso* may be entered against him. Service by publication is allowed in certain cases, and must be published for four successive weeks in some newspaper, the last insertion to be not less than twenty days before the day on or before which the defendant is notified to appear. The defendant can be ruled to plead on the first day of the term, and failing to do so or to appear, judgment may be taken by default, which can be opened during the term by the party making an affidavit of merits, paying costs and pleading, or on such other terms as the court may

impose. In justice courts, summons must give defendant not less than five nor more than twenty days' notice. (*See Actions.*)

Taxation. All property except that of the government, churches, libraries, and schools, is taxable. Taxes constitute a lien on all real estate of the tax debtor. The collector is authorized to seize and sell property to make delinquent taxes. Taxes become delinquent one-half on January 1st and the other half the first of following July, and thereafter bear interest at 25 per cent per annum. The head of a family actually residing in the Territory is allowed as exempt from taxation property of the value of $200. Irrigation and reservoir companies are exempted from payment of taxes during the next six years.

Testimony. (*See Evidence.*)

Transfer of Corporation Stocks. Corporation stock shall be transferred in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except between the parties thereto, until the same shall be entered on the books of the company, showing the names of the parties making the transfer and to whom transferred, the number and designation of the shares, and the date of the transfer.

Wills. Any person of the age of twenty-one years or upwards, and in sound mind, may dispose by will of all his property, except what is sufficient to pay his debts. Two or more witnesses shall be sufficient. The witnesses to a written will must be present, see the testator sign the will, or some one sign it for him at his request as and for his last will and testament, and must sign as witnesses at his request, in his presence and in the presence of each other. Any will executed in any foreign jurisdiction sufficient to convey the title or real estate in such jurisdiction shall be valid in this Territory to the same extent as in the jurisdiction where made. All written wills are irrevocable, except by specially mentioning it in a subsequent will, and either setting it out in full or by stating that he would have repeated it verbatim could he have remembered it, and declaring that he thereby revokes the same. The probate judges have power to qualify and approve wills after hearing the evidence of the witnesses who attest the will, and any other facts connected with the execution of it. If the probate judge finds everything to be legal and proper he approves the will, but if not, then he returns it to the party applying for its approval, with his reasons for failing to approve the same. The person to whom it is returned may present the same to the district court at the next regular term held in the county, for its approval or disapproval, which is final.

SYNOPSIS OF THE LAWS OF NEW YORK

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. Rosendale & Hessberg, Attorneys at Law, Albany. (*See Card in Attorneys' List.*)

Acknowledgments must be made within the State, before a justice of the supreme court; or within the district wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, special deputy clerk of a court, a notary public, or the mayor, a recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds. (No special form, separate and apart from her husband, etc., now required for married women.) If made without the State, they may be taken by judges of United States courts, judges of the supreme, circuit or superior court of any other State or Territory, within the jurisdiction of their courts; by the mayor of any city, or by a New York commissioner, or any officer of such State or Territory authorized by its laws to take acknowledgments. When acknowledged as last above stated, there must be obtained a certificate "under the name and official seal of the secretary of State of the State in which such officer resides, or under the name and official seal of the clerk, register, recorder, or prothonotary of the county in which such officer resides, or the clerk of any court thereof having a seal specifying that the officer was authorized, etc." Provision is made by law for acknowledgments and proofs in foreign countries.

Administration of Estates. The administration of estates is committed to surrogate's courts. In cases of intestacy, letters of administration are to be granted to the relatives of the deceased entitled to succeed to the personal property of decedent, who will accept the same in the following order: 1. To the surviving husband or wife. 2. To the children. 3. To the father. 4. To the mother. 5. To the brothers. 6. To the sisters. 7. To the grandchildren. 8. To any other next of kin, entitled to share in the distribution of the estate. 9. To an executor, or administrator of a sole legatee, named in a will, whereby the whole estate is devised to such deceased sole legatee. If no relative, or guardian of a minor relative, will accept the same, the letters must be granted to the creditors of deceased; the creditor first applying, if otherwise competent, is entitled to preference. If no creditor applies, the letters must be granted to any other person or persons legally competent; county treasurers have preference, and in New York City the public administrator having preference over creditors.

Affidavits may be taken by any officer authorized to administer oaths, including commissioners of deeds and notaries public, the latter also in counties other than for which they are appointed, upon their filing certificates in such county.

Arbitration may be resorted to, upon disputed questions, the practice being regulated by the code of civil procedure.

Arrest. A debtor may be arrested in certain classes of civil action, among which is an action to recover for fraud in contracting the debt or where the debtor has disposed or is about to dispose of his property with intent to defraud his creditors.

Assignments and Insolvency. Statutory provisions exist, regulating the making of general assignments in trust, for the benefit of creditors: Preferences are allowed for the wages or salaries of employés, and to the amount of one-third in value of the assigned estate after deducting such wages or salaries and the costs and expenses of executing the trust. Also regulating the filing of inventory, the giving of bonds and accounting by the assignee. The court has power to remove assignees, and may require creditors to present claims within a period to be prescribed, notice whereof is to be given by advertisement, etc. The dividends paid by such an assignee need only be applied upon the debt of the assignor, and do not discharge or satisfy the whole indebtedness of the assignor.

Attachments may issue in actions for damages for breach of contract, wrongful conversion of personal property, or injury to person or property in consequence of negligence or fraud, where the defendant is either a foreign corporation, or non-resident, or has left the State, or conceals himself to avoid service, or has removed from the State, or sold, assigned, secreted, or is about to remove, sell, assign, or secrete his property with intent to defraud creditors, or where, for the purpose of procuring credit or an extension of credit, a false statement was made in writing, under the hand and signature of the defendant, or a duly authorized agent, made with his knowledge and acquiescence, as to his financial responsibility or standing, or where the defendant, being an adult, has been continuously without the United States for more than six months and has not made a designation of a person upon whom to serve a summons in his behalf.

Banks. The constitution provides (Article VIII, Section 4) that the legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws. Chapter 689, Laws of 1892, entitled "An act in relation to banking corporations," provides a complete plan for the organization of the banking department, whose chief officer is denominated the "superintendent of the banking department." Under it banks may be organized with a capital of not less than $100,000, though in places of not more than 30,000 inhabitants a minimum capital of $50,000 is allowed. In addition to the deposit required to secure the circulating notes, a deposit of $1,000, as a pledge of good faith and guaranty of compliance with the banking laws, is required to be made in the department, and the superintendent is authorized to apply the same or any part thereof in payment of any penalty incurred by or assessment imposed on the bank or bankers making the deposit.

Circulation and the deposit of security therefor is provided for in the act. The State constitution provides that stockholders of all banking corporations shall be liable to the amount of their respective shares for all debts and liabilities; and also that bill holders, in case of insolvency, shall be entitled to a preference in payment over all other creditors of the bank. By Chap. 441 of the Laws of 1897 stockholders are liable to the extent of the amount of their stock at the par value thereof, in addition to the amount invested in such shares. Quarterly reports are required to be made to the superintendent, as of a day designated by the superintendent. It is made the duty of the superintendent, in his discretion, if he shall deem it proper, to personally examine the books, etc., of any bank, or he may designate some competent person to make the examination. The examiner is authorized to administer oaths, and may summon persons and examine them on oath. Willful false swearing is perjury. The act referred to also provides for the organization and management of—

Savings Banks. Supervision over these is given to the State banking department. Each savings bank is to be examined at least once in every two years by the department. Interest-drawing deposits are limited to $3,000 (excepting as to deposits arising from judicial sales, or trust funds).

The following are the provisions of Sec. 116 of the act (relative to investments), as amended:

Sec. 116. The trustees of any savings bank may invest the moneys deposited therein and the income derived therefrom only as follows:

1. In the stocks or bonds, or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, including the bonds of the District of Columbia.

2. In the stocks or bonds or interest-bearing obligations of this State issued pursuant to the authority of any law of this State.

3. In the stocks or bonds or interest-bearing obligations of any State of the United States that has not, within ten years previous to making such investment by such corporation, defaulted in the payment of any part of either principal or interest of any debt authorized by the legislature of any such State to be contracted; and in the bonds or interest-bearing obligations of any State of the United States, issued in pursuance of the authority of the legislature of such State, which have, prior to the passage of this act, been issued for the funding or settlement of any previous obligation of such State theretofore in default, and on which said funding or settlement obligation there has been no default in the payment of either principal or interest since the issuance of said funded or settlement obligation, and provided the interest on such funded or settlement obligation has been paid regularly for a period of not less than ten years next preceding such investment.

4. In the stocks or bonds of any city, county, town or village, school district bonds, "and union free school district bonds issued for school purposes," or in the interest-bearing obligations of any city or county of this State, issued pursuant to the authority of any law of the State for the payment of which the faith and credit of the municipality issuing them are pledged.

5. In the stocks or bonds of the following cities: Boston, Worcester, Cambridge, Lowell, Fall River, Springfield, and Holyoke, in the State of Massachusetts; St. Louis, in the State of Missouri; Cleveland, Cincinnati and Toledo, in the State of Ohio; Detroit and Grand Rapids, in the State of Michigan; Providence, in the State of Rhode Island; New Haven and Hartford, in the State of Connecticut; Portland, in the State of Maine; Philadelphia, Pittsburg, Allegheny, Reading and Scranton, in the State of Pennsylvania; Minneapolis and St. Paul, in the State of Minnesota; Des Moines, in the State of Iowa; Milwaukee, in the State of Wisconsin; Louisville in the State of Kentucky; Paterson, Trenton, Newark and Camden, in the State of New Jersey; Baltimore in the State of Maryland. If at any time the indebtedness of any of said cities, less its water debt and sinking fund, shall exceed 7 per cent of its valuation for purpose of taxation, its bonds and stocks shall thereafter cease to be an authorized investment for the moneys of savings banks, and until such indebtedness shall be reduced to 7 per cent of the valuation for the purposes of taxation, but the superintendent of the banking department may, in his discretion, require any savings bank to sell such bonds or stocks of said city as may have been purchased prior to said increase of debt.

6. In bonds and mortgages on unincumbered real property situated in this State, and worth at least twice the amount loaned thereon. Not more than 65 per cent of the whole amount of deposits shall be so loaned or invested. If the loan is on unimproved and unproductive real property, the amount loaned thereon shall not be more than 40 per cent of its actual value; and no investment in any bond and mortgage shall be made by any savings bank, except upon the report of a committee of its trustees charged with the duty of investigating the same, and who shall certify to the value of the premises mortgaged or to be mortgaged, according to their best judgment, and such report shall be filed and preserved among the records of the corporation. Also in the first mortgage bonds of any railroad corporation of this State, the principal part of whose railroad is located within this State; or of any railroad corporation of this and any other State or States connecting with and controlled and operated as part of the system of any such railroad corporation of this State, and of which connecting railroad at least a majority of its capital stock is owned by such a railroad corporation of this State; or in the mortgage bonds of any such railroad corporation of an issue to retire all prior mortgage debt of such railroad corporation, provided that at no time within five years next preceding the date of any such investment shall such railroad corporation of this State or such connecting railroad corporations, respectively, have failed regularly and punctually to pay the principal and interest of all its mortgage indebtedness, and in addition thereto, regularly and punctually to have paid dividends upon all its outstanding capital stock during the preceding five years, at the rate of not less than 4 per centum per annum; and provided, further, that at the date of every such dividend the outstanding capital stock of such railroad corporation or such connecting railroad company, respectively, shall have been equal

to at least one-half of the total mortgage indebtedness of such railroad corporations, respectively, including all bonds issued or to be issued under any mortgage securing any bond in which such investments shall be made. Also in the mortgage bonds of the following railroad corporations: The Chicago & North-Western R. R. Co., Chicago, Burlington & Quincy R. R. Co., Michigan Central R. R. Co., Illinois Central R. R. Co., Pennsylvania R. R. Co., Delaware & Hudson Canal Co., Delaware, Lackawanna & Western R. R. Co., New York, New Haven & Hartford R. R. Co., Boston & Maine R. R. Co., Maine Central R. R. Co., the Chicago & Alton R. R. Co. Provided, that at the time of making such investment the said railroads shall have earned and paid regular dividends of not less than 4 per centum per annum in cash on all their issues of capital stock for the ten years next preceding such investment, and provided the capital stock of any of said railroad corporations shall equal or exceed in amount one-third of the par value of all its bonded indebtedness; and further provided that all bonds hereby authorized for investments shall be secured by a first mortgage of the whole or a part of the railroad and railroad property actually in the possession of and operated by such company, or that such bonds shall be mortgage bonds of an issue to retire all prior mortgage debt of such railroad company; also in the first mortgage bonds of the Fonda, Johnstown & Gloversville R. R. Co., or in the mortgage bonds of said railroad company of an issue to retire all prior mortgage debts of said railroad company, and provided the capital stock of said railroad company shall equal or exceed in amount one-third of the par value of all its bonded indebtedness; and provided also that such railroad be of standard gauge of 4 feet 8½ inches. Not more than 20 per centum of the whole amount of deposits of any bank shall be loaned or invested in railroad bonds, and not more than 5 per centum of the deposits of any bank shall be invested in the bonds of any one railroad. Street railroad corporations shall not be considered railroad corporations within the meaning of this section. (Amended by Chap. 43, Laws of 1900.)

7. In real property, subject to the provisions of section 117 of this act. (This section limits the holding of real estate: 1. To a banking house, at a cost not over 25 per cent of the surplus. 2. Real estate purchased at foreclosure of its mortgages.)

SEC. 118. The trustees of any such corporation shall, as soon as practicable, invest the moneys deposited with them in the securities named in the last preceding section of this act; but, for the purpose of meeting current payments and expenses in excess of the receipts, there may be kept an available fund of not exceeding 10 per cent of the whole amount of deposits with such corporation, on hand, or deposit in any bank in this State, organized under any law of this State, or of the United States, or with any trust company incorporated by any law of this State, but the sum so deposited in any one bank or trust company shall not exceed 25 per cent of the paid-up capital and surplus of such bank or trust company; or such available fund, or any part thereof, may be loaned upon pledge of the securities, or any of them, named in subdivisions one, two, three and four of the preceding section but one, but not in excess of 90 per cent of the cash market value of such securities so pledged; and, should any of the securities so held in pledge depreciate in value, after making any loan thereon, the trustees shall require the immediate payment of such loan, or of a part thereof, or additional security therefor, so that the amount loaned shall at no time exceed 90 per cent of the market value of the securities pledged for the same.

Lawful Money Reserve. Banks of discount and deposit, having their principal places of business in the cities of New York or Brooklyn, are required to have at all times on hand at least 15 per cent of their aggregate amounts of deposits, and all other banks 10 per cent.

Loans. Loans to any person, company, corporation, or firm, or upon paper upon which any such person, company, corporation, or firm may be liable, are limited to one-fifth part of the capital stock actually paid in, and surplus. But the discount of bills of exchange drawn in good faith against actually existing values; or of commercial or business paper actually owned by the person negotiating the same, shall not be considered as a part of any such loan or discount.

Corporations. Insurance, banking, railroad, transportation, and business corporations may be formed under the general laws of the State.

Foreign Corporations (other than moneyed corporations), before doing business in the State, are required to obtain a certificate of authority from the secretary of State. "No foreign stock corporation, doing business in this State, without such certificate, shall maintain any action in this State upon any contract made by it in this State until it shall have procured such certificate." (General corporation law, section 15.) Foreign corporations may acquire on sale in foreclosure of a mortgage held by it or upon any judgment or decree for debts due it, or upon a settlement to secure such debts, real property in this State, covered by or subject to such mortgage, judgment, decree, or settlement, and may take by devise any real property situate within this State, and hold the same for not exceeding five years. (General corporation law, section 18, as amended by chapter 136, Laws 1894.) Foreign corporations may engage in the business of buying and selling and improving real estate in this State, when authorized by its certificate of incorporation. (Lancaster vs. Amsterdam Improvement Co., 140 N. Y., 576.) An assignment for the benefit of creditors made in this State by an insolvent foreign corporation, valid under the law of its domicile, will be recognized as valid here. (Vanderpoel vs. Gorman, 140 N. Y., 568, Jan., 1894.)

Courts. *Terms and Jurisdiction.* The supreme court has unlimited jurisdiction. There is a county court for each county, having jurisdiction to the amount of $2,000, in actions where the defendant is, or if there is more than one, where all of the defendants are, residents of the county. Justices of the peace have jurisdiction in actions on contract where the sum claimed does not exceed $200, and district courts of the city of New York, where the sum does not exceed $250, and the city court of the city of Albany, where the sum does not exceed $1,000.

Days of Grace are abolished on paper in which there is no expressed stipulation to the contrary.

Deeds. The legislature has provided for short forms of deeds and mortgages.

Depositions. The deposition of a party or of a person not a party within this State, in an action brought or to be brought, may be taken, where shown that such testimony is material and necessary in the prosecution or defense of the action; or if the action is pending that the person to be examined is about to depart from the State, or that he is so sick or infirm as to afford reasonable ground to believe that he will not be able to attend the trial. Such deposition, except that of a party taken at the instance of an adverse party, can only be used upon proof of the witness' inability to attend the trial. Depositions may be taken without the State for use within the State. The commission, in the discretion of the court, may direct the examination upon oral questions or written interrogatories. Depositions may also be taken within the State for use without the State in an action or special proceeding pending in a court without the State, either in the United States or in a foreign country. A person who fails to respond to a subpœna for such examination is guilty of contempt of court.

Executions will issue at any time within five years from date of judgment; after five years, leave must be obtained from the court. Executions may issue to two or more counties at the same time. There are no stay laws, unless an appeal is taken, when an undertaking securing the judgment can be given. On a judgment, in any case, after execution is returned unsatisfied, defendant and others may be examined as to the judgment debtor's property in proceedings supplementary to execution, and required to apply any not exempt in payment. In certain cases a debtor may be imprisoned on execution; provision is made for the giving of bail to remain within the jail limits. The debtor may be discharged upon making assignment of his property (if debt is $500 or over, only after three months' imprisonment).

Exemptions. Homestead, $1,000 (to secure such exemption, deed, or notice designating that the property is to be used as a homestead, must be recorded); necessary furniture, tools, team, etc., $250. Even in supplementary proceedings, the judgment debtor cannot be ordered to apply upon the judgment his earnings for his personal services within sixty days preceding the order, if such earnings are necessary for the support of a family wholly or partly supported by his labor.

False Pretenses. A purchase of property by means of a false pretense is not criminal, where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing, and signed by the party to be charged.

Holidays. The term holiday includes the following days in each year: The first day of January, known as New Year's Day; the twelfth day of February, known as Lincoln's Birthday; the twenty second day of February, known as Washington's Birthday; the thirtieth day of May, known as Memorial Day; the fourth day of July, known as Independence Day; the first Monday of September, known as Labor Day; and the twenty-fifth day of December, known as Christmas Day; and if either of such days is Sunday, the next day thereafter; each general election day and each day appointed by the president of the United States or by the governor of this State as a day of general thanksgiving, general fasting and prayer, or other general religious observance. The term half-holiday includes the period from noon to midnight of each Saturday which is not a holiday. (Chap. 614, Laws of 1897.)

Interest. The legal rate of interest is fixed at 6 per cent. All notes, bonds, contracts, securities, etc., whereby a greater rate is reserved, or taken, or agreed for, are absolutely void, and the lender can recover neither principal nor interest in such cases, but corporations can not plead usury as a defense. Usury is also punishable as a misdemeanor by fine or imprisonment, or both. State banks have been placed on the same footing as national banks as regards usury, and are thereby exempt from the extreme penalties mentioned above. By Chapter 237, Laws of 1882, on demand loans of $5,000 and over, made with warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds, or other negotiable instruments, pledged as collateral, it is lawful to receive and collect, as compensation for making such advances, any sum, to be agreed upon in writing by the parties to the transaction.

Judgments. Judgments docketed in a county clerk's office bind, and are a charge upon, real property for ten years, which the judgment debtor has or acquires within that time. A judgment is presumed to be paid after the expiration of twenty years from the time when the party recovering it was first entitled to a mandate to enforce it. Confession or an offer of judgment can be made in an action. Married woman may confess judgment. (Chapter 38, Laws of 1897.)

Limitations of Suits. Contracts, express or implied, except those under seal, six years; recovery of real estate upon judgments of courts of record and sealed instruments, twenty years. Revivor: Part payment or new promise in writing.

Married Women may take, hold, mortgage, and convey real and personal property. A married woman may contract with her husband, or any other person, to the same extent, with like effect, and in the same form as if unmarried, and she and her separate estate shall be liable thereon, whether the contract relates to her separate estate or otherwise, and in no case shall a charge upon her separate estate be necessary. (Chap. 594, Laws of 1892.) A married woman may convey real estate directly to her husband, and the husband may convey directly to his wife. Widows have right of dower. Married woman may confess judgment. (Chapter 38, Laws of 1897.)

Mortgages must be executed and recorded same as deeds. Where containing a power of sale, may be foreclosed by an action brought for the purpose, or without intervention of court (by advertisement). There is no redemption under a mortgage sale. Chattel mortgages, except where the possession of the property mortgaged passes to, and is retained by, the mortgagee, must be filed forthwith, or are void as against creditors and innocent purchasers. Such mortgage ceases to be valid in one year, except as to the mortgagor or his representatives, unless a copy thereof is refiled annually with a certificate of the mortgagee as to the amount unpaid thereon, and this copy, mortgage, and certificate constitutes a renewal of the mortgage for one year.

Notes and Bills of Exchange. Negotiable instruments are defined by Chapter 612 of the Laws of 1897, entitled "An Act in relation to negotiable instruments, constituting Chapter 50 of the General Laws." Section 20 provides as follows: "SECTION 20. *Form of Negotiable Instrument.* An instrument to be negotiable must conform to the following requirements: 1. It must be in writing and signed by the maker or drawer. 2. It must contain an unconditional promise or order to pay a sum certain in money. 3. Must be payable on demand, or at a fixed or determinable future time. 4. Must be payable to order or to bearer; and 5, where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty." Its negotiability is not affected by a provision which authorizes the sale of collateral securities in case the instrument be not paid at maturity, or authorizes a confession of judgment if the instrument be not paid at maturity; or waives the benefit of any law intended for the advantage or the protection of the obligor; or gives the holder an election to require something to be done in lieu of payment of money. It is not necessary that paper should be made payable at a bank or any fixed place. To charge indorser, notice of non-payment must at once be given to him. The time of maturity is regulated by statute as follows: "SECTION 145, as amended by Chap. 336, Laws of 1898. *Time of Maturity.* Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 o'clock, noon, on Saturday, when that entire day is not a holiday." (*See Holidays.*)

Seal. The private seal of a person may consist of a wafer, wax, paper, or other similar adhesive substance, or of the word "seal" or the letters "L. S." (Sec. 13, Chap. 677, Laws 1892.)

Suits in civil actions must be prosecuted in the name of the real party in interest, except that an executor, administrator, trustee of an express trust, or person specially authorized by statute, may sue in his own name. A married woman can now sue and be sued in an action in tort without joining her husband. (Chap. 51, Laws of 1890.) The practice is under a code, known as the "Code of Civil Procedure."

Taxes. Lands may be sold for taxes when two years delinquent. Publication of sale is made for twelve weeks in the county paper, and

two years after sale are allowed for redemption, the owner having the right to redeem by paying the purchase money and interest at 10 per cent per annum. A mortgagee (where the instrument is duly recorded) has a similar right of redemption and upon filing a notice of his mortgage, its date, record, etc., with the proper officer, is entitled to notice before the tax title can cut off his mortgage. Special provisions for sales of lands for taxes exist in several cities and counties. In cities, assessments for local improvements may be enforced by sales of the houses and lots assessed.

Wills. All persons, except idiots, persons of unsound mind, and infants, may devise their real estate by will. Males of eighteen years and upward, and females of sixteen years and upward, may bequeath personal estate. Wills must be subscribed by the testator in the presence of two witnesses, each of whom must sign his name at the end of the will, at the request of the testator, who must acknowledge and declare the instrument to be his last will. A will of an unmarried woman is revoked by subsequent marriage. A devise or bequest to a witness whose testimony is necessary to establish the will is void. The Code of Civil Procedure regulates the practice of probating wills in the surrogates' courts of the several counties of the State. Within two years after the probate of a will an action may be brought in the supreme court to determine the validity of the probate, by any person interested in the will or codicil. Persons within age of minority, of unsound mind, imprisoned, or absent from the State may bring action two years after disability has been removed.

SYNOPSIS OF THE LAWS OF NORTH CAROLINA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by JOHN W. HINSDALE, Attorney at Law, Raleigh.
(*See Card in Attorneys' List.*)

Accounts and Claims, Proof of. In any action instituted in any court of the State upon an account for goods sold and delivered, an itemized statement of said account, properly verified, shall be received in evidence, and shall be deemed *prima facie* evidence of the correctness of said account. All creditors of the maker of a deed of trust or assignment must file with the clerk of the superior court a statement under oath, that the amount claimed is justly due, after allowing all credits and offsets. Creditors of a decedent must present their accounts and claims to the administrator or executor within twelve months after publication of notice of administration. But if they fail to do so, and the personal representative has not disbursed the assets of the estate, the creditor may still recover of the personal representative. If he has disbursed the assets, the creditor may recover of the heirs, devisees, legatees, or next of kin, who may have received property of the intestate.

Acknowledgments and Probate of Deeds. Every conveyance of land must be acknowledged or proved and registered in the county where the land lies. All deeds conveying lands in this State, or letters of attorney, or other instruments requiring registration, must be probated in the following manner: 1. When the grantor or maker, or subscribing witness resides in the county wherein the land lies, the deed, etc., must be acknowledged by grantor or maker, or proved by the oath of such subscribing witness, before a justice of the supreme court, a judge of the superior court, a commissioner of affidavits appointed by the governor of this State, the clerk of the supreme court, a clerk of the superior court, a deputy clerk of the superior court, a clerk of the criminal court, a notary public, or a justice of the peace of this State, who shall enter his certificate thereon, and such deed, letter of attorney, or other instrument with the certificate thereon or exhibition to the clerk of the superior court, shall, if in due form, be admitted by him to probate, and ordered to be registered with the certificate thereto attached. 2. When the grantor, maker, or subscribing witness resides in the State, but not in the county wherein the land lies, such deed, etc., must be acknowledged by such grantor or maker, or proved by oath of such subscribing witness before a justice of the supreme court, a judge of the superior court, a commissioner of affidavits appointed by the governor of this State, the clerk of the supreme court, a clerk of the superior court, a deputy clerk of the superior court, a clerk of the criminal court, a notary public, or a justice of the peace of this State. If the proof or acknowledgment shall be had before a justice of the peace in any county in this State other than the county in which the instrument is to be registered, his certificate of proof of acknowledgment made by such justice of the peace shall be accompanied by the certificate of the clerk of the superior court of the county in which said justice of the peace resides, that such justice of the peace was at the time his certificate bears date an acting justice of the peace of such county and that said justice's genuine signature is set to his certificate. The certificate of the clerk of the superior court shall be under his hand and official seal. And the clerk of the superior court of the county wherein the land lies, or his duly appointed deputy, upon the exhibition to him of such deed, etc., together with the said certificates, or with the certificate of the judge of the supreme or superior court, or notary, shall adjudge the said deed, letter of attorney, or other instrument to be duly acknowledged or proved in the same manner as if taken or made before him, and order the same, with his certificate and the other certificate attached, to be registered. 3. Where the grantor, maker, or subscribing witness resides outside of the State, but within the United States, the deed, etc., may be acknowledged or proved by the grantor, maker, or subscribing witness before any judge of a court of record, any clerk of a court of record, any notary public, any mayor or chief magistrate of an incorporated town or city, or any justice of the peace; and the certificate of said judge, clerk of court of record, under the seal of said court, mayor, or chief magistrate of an incorporated town or city, or notary public under their respective seals, touching the acknowledgment of proof of such persons shall, if adjudged to be in due form, by the clerk of the superior court or his duly appointed deputy, of the county in which the land is situate, or the letter of attorney, or other instrument is required to be registered, be ordered by said clerk to be registered. If the acknowledgment or proof of the execution of said deed, etc., be had before a justice of the peace of another State, then the clerk of the court of record of the county in which said justice resides, shall certify under the seal of his court, that said justice was, at the time of taking the said acknowledgment or proof, an acting justice of the peace of the said county and State, and that the signature of said justice was in his own proper handwriting, and if said certificate shall be adjudged to be in due form by the clerk of the superior court or his duly appointed deputy, of the county in which the land is situate, then the said clerk of the superior court shall order the same to be registered. 4. Where the grantor or maker and the subscribing witness reside beyond the limits of the United States, the deed or other instrument may be personally acknowledged by such grantor or maker, or proved on the oath of such subscribing witness before any judge of a court of record, any clerk of a court of record, any notary public, or any mayor or chief magistrate of an incorporated town or city, or before any clerk of a court of record, ambassador, minister, consul, or commercial agent of the United States, and where such proof or acknowledgment is certified under the corporate seal of such chief magistrate, or under the official seal of such ambassador, minister, consul, or commercial agent, or under the hand of the said judge, and where such certificate is affixed to the deed or other instrument, and the same is exhibited before the clerk of the superior court having jurisdiction, or his duly appointed deputy, he shall adjudge that such deed or other instrument is duly proved or acknowledged, and order it, with his certificate and the accompanying certificates, to be registered. 5. When the privy examination of any married woman is necessary to be taken, the persons authorized to take the acknowledgment of any grantor or maker or proof of the execution of any deed, etc., are empowered to take the privy examination of any married woman touching her free assent to such deed, letter of attorney, or other instrument to which her assent is or may be necessary, and to certify the fact of such privy examination in the same manner as they are authorized to take and certify the acknowledgment of any grantor or maker of such deed, letter of attorney, or other instrument, and the clerk of the superior court or his duly appointed deputy, of the county in which the land is situate, or of the county where the deed, letter of attorney, or other instrument is required to be registered, upon the exhibition of such deed, etc., with the certificates to him, if he shall adjudge the same to be in due form, shall admit the said deed, and order it, with his certificate and the accompanying certificates, to be registered. 6. When the proof of acknowledgment of conveyance, power of attorney, or other instrument concerning the interest of a married woman in lands is taken as above directed, no clerk of the superior court shall adjudge such conveyance or other instrument to be duly proved or acknowledged, unless the private examination of such woman is taken according to the laws of this State, and a certificate thereof attached to the deed or other instrument. 7. Whenever the subscribing witness to any instrument required or allowed to be registered shall be a non-resident or shall be dead, and the maker shall also be a non-resident or dead, the proof of the handwriting of such witness or that of the maker before the clerk of the superior court of the county where the instrument is sought to be registered, or his duly appointed deputy, shall be sufficient evidence of the execution thereof to admit the same to registration, and in case such maker shall have subscribed a mark only, the proof of the signature of such witness shall be sufficient. 8. Whenever any such instrument shall not have a subscribing witness, proof of the handwriting of the maker shall be sufficient to admit the same to registration. 9. In all cases of the probate of any deed or other instrument required or allowed to be registered, having a subscribing witness who may be dead, or out of the State, or of unsound mind, satisfactory proof of his handwriting, or the handwriting of the subscribing witness, grantor, or maker, shall be deemed sufficient proof for the purpose of allowing the registration thereof. When the proof or acknowledgment of any instrument is had before any official of some other State, Territory, or country, and such official have no official seal, then the certificate of such official shall be accompanied by the certificate of a clerk of a court of record of the State, Territory, or country in which the official taking the proof of acknowledgmet resides, of the official position and signature of such official; such certificate of the clerk shall be under his hand and official seal and shall be in substance as follows:

I, A. B. (here give the name and official title of the clerk of a court of record as provided in this act), do hereby certify that C. D. (here give name of the official taking the proof, etc.) was at the time of signing the foregoing (or annexed) certificate a (here give the official title of the officer taking proof, etc.) in and for the county of.....State of..... (or other political division of the State, Territory, or country as the case may be), and that his signature thereto is his own proper handwriting.

In witness whereof, I hereunto set my hand and seal of office this..... day of .....A. D.

(Seal of office.) (Signature of clerk.)

Whenever it shall appear to the clerk of the superior court of any county that any person non-resident of this State is desirous of acknowledging a power of attorney, deed, or other conveyance touching any real estate, situate in the county of the said clerk, he shall issue a commission to a commissioner for receiving such acknowledgment, or taking such proof, and said commissioner may likewise take the acknowledgment and privy examination of a married woman, separate and apart from her husband, touching her assent to any power of attorney, deed, or other conveyance touching real estate in said county. The commissioner shall make certificate of the acknowledgment or proof of privy examination made by him, and shall return the same to the clerk of the superior court, whereupon he shall adjudge that such conveyance, power of attorney, or other instrument is duly acknowledged or proved, and that such examination is in due form, and shall order the same to be registered. In all cases of deeds or other instruments made by husband and wife and requiring registration, the probate of deed or other instrument as to the husband, and the acknowledgment and privy examination of the wife, may be taken before different officers authorized by law to take probate of deeds, whether both of said officers reside in this State, or only one in this State, and the other in another State, and it shall not be material whether the husband acknowledges the execution of the deed or other instrument before or after the acknowledgment and privy examination of the wife. When any grantor shall execute and deliver to the grantee any deed or other instrument of writing which should be registered, and to which there is no witness, upon the grantor's refusing to acknowledge his execution thereof before proper officer to take such acknowledgment after due notice to the grantor, the grantee upon exhibiting the same before the clerk of the superior court of the county in which such instrument should be registered, may, upon motion before said clerk, have a subpœna issued for such grantor to appear before the clerk of the superior court, or it may be lawful in such cases for the grantee to prove the handwriting of such grantor, upon his refusal to acknowledge the same, by at least one responsible and disinterested witness, and the clerk may admit the instrument to probate and order the same registered.

Actions. There is no distinction between actions at law and suits in equity, and there is but one form of action called a civil action. The summons in the superior court is issued by the clerk of the court, and the plaintiff must file a bond for defendant's costs in the sum of $200, signed by a resident surety or by a surety company. The plaintiff should send out from $10 to $20 to be deposited with the clerk, to cover his own costs. The summons is returnable to the next term of the superior court and must be served at least ten days before the term. Complaints must be filed within the first three days of the term, and answers or demurrers must be filed within the term to which the summons is returnable. The successful party recovers costs, but no allowance to himself or attorneys. The practice is regulated by a code of civil procedure similar to the New York Code. No bond is required when the action is commenced in a justice's court. Such summonses may be made returnable immediately, and a judgment may be obtained at once. The pleadings may be oral or in writing.

Affidavits may be made before the clerks of the supreme court and superior courts, notaries public, and justices of the peace of the State; and also before commissioners of deeds for North Carolina residing in other States, and clerks of any court of record of another State. A pleading may be verified before a notary public in or out of the State, as well as before the other officers above named.

Aliens. Resident or non-resident aliens may take real property by purchase or descent or other operation of law.

Appeals may be taken from judgments of justices of the peace to the superior court, and from clerks of the superior courts to the superior court at term; and from the superior court to the supreme court. Notice of appeal must be given within ten days after the judgment.

Arrest and Bail. The defendant may be arrested in the following cases: 1. In an action for the recovery of damages, on a cause of action not arising out of a contract, where the defendant is not a resident of the State, or is about to remove therefrom, or where the action is for injury to person or character, or for injuring or for wrongfully taking, detaining, or converting property. 2. In an action for a fine or penalty, or for seduction, or for money received, or for property embezzled or fraudulently misapplied by a public officer or by an attorney, solicitor, or counselor, by an officer or agent of a corporation or banking association, in the course of his employment as such, or by a factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment. 3. In an action to recover the possession of personal property unjustly detained, or where the property or any part thereof has been concealed, removed, or disposed of so that it can not be found or taken by the sheriff, and with the intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof. 4. When the defendant has been guilty of a fraud in contracting a debt or incurring the obligation for which the action is brought, or is concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit. 5. When the defendant has removed or disposed of his property, or is about to do so with the intent to defraud his creditors. But no woman shall be arrested in any action except for willful injury to person, character, or property, and no person shall be arrested on Sunday. An order for the arrest of the defendant must be obtained from the court in which the action is brought or from the judge thereof. The order may be made when it shall appear to the court or judge thereof by the affidavit of the plaintiff, or of any other person, that a sufficient cause of action exists, and that the case is one of those above provided for. Before making the order the court or judge thereof shall require a written undertaking on the part of the plaintiff with sufficient surety, payable to the defendant, which shall be at least $100, to the effect that if the defendant recover judgment the plaintiff will pay all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking. The order of arrest may be made to accompany the summons or to issue at any time afterward before judgment. The defendant at any time before execution shall be discharged from arrest either upon giving bail or upon depositing the amount mentioned in the order of arrest. He may give bail by causing an undertaking in the sum mentioned in the order of arrest payable to the plaintiff to be executed, with sufficient surety to the effect that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the judgment thereof. If the action be to recover the possession of personal property wrongfully detained, etc. (see "3d" above), the undertaking must be for double the value of the property. If the defendant can not be found after an execution against his property has been returned unsatisfied in whole or in part, an execution against his person is thereafter issued, and if he can not be found, the bail may be proceeded against by motion in the cause after ten days' notice to such bail. The defendant is entitled to a jury trial if he makes up an issue on the question of fraud upon which he is arrested.

Assignment and Insolvency. Debtors are permitted by the state law to make assignments or deeds of trust with preferences of particular creditors; but, of course, the bankruptcy law prevents it. A general assignment for the benefit of creditors will not affect any lien in favor of a creditor previously obtained. Upon the execution of any voluntary deed of trust or deed of assignment for the benefit of creditors, all debts of the maker thereof shall become due and payable at once. Within ten days the trustee or assignee named in the deed or substituted by the clerk must file with such clerk a sworn inventory, and must file further inventories if more assets come into his hands thereafter. Upon complaint of any creditor under oath that the assignee or trustee is insolvent, the clerk, upon ten days' notice, shall remove the trustee or assignee if found to be insolvent, unless he gives bond in a sum double the value of the assets. Upon such removal the clerk shall appoint another trustee, who shall give bond as above. Trustees and assignees shall sell none but perishable property until the expiration of ten days. Trustees or assignees must file with the clerk every three months a verified account of receipts and disbursements and a final account within twelve months. Clerks may extend the time of filing quarterly and final accounts. All creditors of the trustor or assignor, before receiving any dividend under the deed, must file with the clerk of the court a statement under oath that the amount claimed is justly due, after allowing all credits and offsets to the best of their knowledge and belief. False swearing by creditors, or trustee or assignee, and failure on part of assignee to file an inventory and returns and accounts as required, and selling property contrary to the requirements of the act, are made misdemeanors. Assignments like mortgages are good against creditors, or subsequent alienees, only after registration.

Attachments. A warrant of attachment against the property of one or more defendants in an action may be granted upon the application of the plaintiff when the action is to recover a sum of money only, or damages for one or more of the following causes: 1. Breach of contract, express or implied. 2. Wrongful conversion of personal property. 3. Any injury to real or personal property in consequence of negligence, fraud, or other wrongful act. The warrant of attachment may be granted to accompany the summons, or at any time after the commencement of the action. Personal service of the summons must be made upon the defendant against whose property the attachment is granted, within thirty days after the granting thereof, or else upon the expiration of the same time, service of the summons by publication must be commenced pursuant to an order obtained therefor, and if publication has been or is thereafter commenced, the service must be made complete by the continuance thereof. To entitle the plaintiff to such warrant, he must show by affidavit, by himself or his agent, to the satisfaction of the court granting the same, as follows: 1. That one of the causes of action above specified exists against the defendant. If the action is to recover damages for breach of contract, the defendant must show that the plaintiff is entitled to recover a sum stated therein over and above all counterclaims known to him. 2. That the defendant is a foreign corporation or a domestic corporation, none of whose officers can be found in the State after due diligence, or not a resident of the State; or if he is a natural person and a resident of the State, that he has departed therefrom with the intent to defraud his creditors, or to avoid the service of summons, or keeps himself concealed therein with like intention; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the State, with the intent to defraud his or its creditors, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete property with the like intent. Before issuing the same, the court shall require a written undertaking on the part of the plaintiff with sufficient surety to the effect that if the defendant recover judgment, or the attachment be set aside, by order of the court, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least $200. A non-resident is entitled to the benefit of this law, and the affidavit may be verified by an agent. The defendant may have the attachment vacated: 1. For cause shown. 2. Upon the execution of an undertaking, with sufficient surety that he will pay the amount of the plaintiff's judgment, not exceeding the sum specified in the undertaking, which shall be at least double the amount claimed by the plaintiff in his complaint.

Banks. North Carolina banks deal in exchange, gold and silver, bullion uncoined, uncurrent paper bonds and stocks, and public or other securities, manufactured goods, cotton, or other products of the country; may purchase and hold and sell real and personal estate for the transaction of business, or such as may be conveyed to secure debts to said banks, or for other purposes; may discount notes and lend money at the legal rate of interest which may be taken in advance. They may pay interest on deposits. Bills, notes, certified checks, or other obligations, when signed by the proper officers of the bank, shall be as binding as if under the seal of the bank. Those payable to order shall be assignable by endorsement, and those payable to bearer shall be negotiable and payable by delivery only. All banks and bankers must make statements of their financial condition, to the corporation commission, at the same times the National banks are required to make such statements to the comptroller. These statements are to be sworn to by the president or cashier, and attested by three directors, or, in case of a private bank, by the president, manager, or owner. The corporation commission prepares the forms of these statements. They are to be published. An examination is to be made annually at the expense of the bank by some person appointed by the corporation commission to look into the affairs of the bank without notice. If it shall appear by the examiner's report that the bank is insolvent or in immediate danger of insolvency, or is guilty of fraud, either in practices or concealment, the corporation commission must take legal steps to wind up the bank and place it in the hands of a receiver. If the bank is found to be in an uncertain or precarious condition the corporation commission may give it a chance to strengthen or rectify by a notice of thirty to ninety days, at his discretion; on failure to do so, the corporation commission must take steps to stop it and turn it over to a receiver. Banks and bankers failing to furnish the statement are placed under penalties. Willfully false statements by an officer are made felonies.

Savings banks may be incorporated under the general law. There shall be not less than ten members. The company may, at a regular meeting, elect any citizen of this State a member, but the number of members by election shall not exceed thirty at any one time. The continuous deposit of $1,000 or more for a period over six months previous to an annual meeting shall constitute such depositor a member of the corporation. His membership shall continue so long only as such sum is on continuous deposit. There shall be a president, vice-president, and not less than nine trustees, a cashier, clerk, and other necessary officers. The bank shall be subject to examination by a committee of the legislature. A commissioner shall be appointed by the governor for each bank, who shall once a year, and oftener, if he desires, make an investigation of the affairs of the bank. This shall also be done upon the sworn request of any four officers, trustees, creditors, or depositors of the bank setting forth reasons therefor. Upon application of the commissioner the bank may be restrained from further business, and the attorney-general shall prosecute for violations of the law. Treasurer to be appointed by trustees shall give bond. Trustees must meet every three months. They shall not receive more than $2,000 deposits from one individual, and may pay interest on deposits. The deposits shall be invested by a committee of investment in first mortgages of real estate, United States bonds, bonds of any State of the Union whose bonds are at or above par on the New York stock exchange, notes or bonds of any county or municipality when such indebtedness does not exceed 5 per cent of its taxable property; first mortgage railroad bonds which pay interest regularly, bank stock, notes of any person with a pledge of any of the aforesaid securities at no more than 75 per cent of the market or par value, personal notes of the depositors of the association, not exceeding one-half of the amount of his deposit; personal notes, with two solvent sureties; real estate and buildings for use of banks, not exceeding in value 10 per cent of deposits, and not exceeding $25,000; real estate acquired by foreclosure of mortgage owned by it. Every such corporation shall, at the time of making each semi-annual dividend, reserve as a guarantee fund (to meet losses in its business) from the net profits of the preceding six months, not less than one-eighth nor more than one-fourth per cent of the whole amount of deposits, until such fund amounts to 10 per cent of the whole amount of deposits. Ordinary dividends shall be divided among the depositors every six months, not to exceed 2½ per cent on all sums which have been on deposit six months preceding, or 1½ per cent on all sums which have been on deposit for three months preceding. Before this is done there must be made a deduction for all reasonable expenses and the guarantee fund. Once in three years, if the net profits accumulated in excess of the guarantee fund and dividends amount to 1 per cent of the deposits which have remained in the corporation for one year then next preceding, such net profits shall be divided among the depositors. No dividend shall be declared unless authorized by a vote of the trustees after a full examination. Deposits of less than $100 standing in the name of a deceased person may be paid to the next of kin or to the person defraying or assuming the expenses of the last sickness and burial, with the appointment of a legal representative. Deposits made by a married woman shall be paid only to her or to her order. Deposits by a minor may, at the discretion of the trustees or committee of investment, be paid to such minor.

The stockholders of all banks organized under State laws are held individually responsible equally and ratably, and not one for another, for all contracts, debts, and agreements of such association to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such share. The total liabilities to any State bank of any person, firm, or corporation for money borrowed, including in the liabilities of a firm, the liability of the several members thereof, shall at no one time exceed one-tenth part of the amount of the capital stock actually paid in. But this does not apply to any bank which has a paid-up capital of $100,000 or less. The discount of bills of exchange drawn in good faith against actually existing value, and the discount of commercial paper actually owned by the person negotiating the same, shall not be considered as money borrowed.

All banks or officers and directors of State banks are required to take an oath to observe the constitution and laws of North Carolina, and to well and truly discharge, according to law, all the duties of their offices.

Taxes imposed for State purposes upon the shares of stock in any bank, whether State or National, shall be paid by the cashier of the bank directly to the State treasurer. The shares of residents may be taxed for school and city purposes. The tax shall be paid by the cashier to the sheriff. The value of shares held by non-residents shall not be deducted from the aggregate value of the shares of the bank. Every such bank, in addition to the *ad valorem* tax on the capital invested, shall pay annually to the State treasurer a tax according to the capital engaged, on a capital of $10,000 or less, $25; and $2 for each $1,000 of capital in excess of $25,000; and $25 additional for every county in which it has an agency. On failing to comply with the above the bank shall pay to the State treasurer $2,000.

Banks and savings banks shall deliver to the assessor a sworn statement of their capital stock setting forth particularly: 1. The name and the location of the bank. 2. The amount of capital stock authorized, and the number of shares into which such capital stock is divided. 3. The amount of capital stock paid up. 4. The market value, or if no market value, then the actual value of the shares of stock. 5. The assessed value of all its real and personal property. The real and personal property shall be listed and valued as other real and personal property is listed and assessed.

The aggregate of such assessed value shall be deducted from the aggregate value of its shares of stock, and the remainder, if any, shall be listed in the name of the bank. Stockholders in any bank, State or National, shall be assessed on the actual value of the shares of stock therein, in the county, city, or town where the bank is located, for the purposes of State taxation. For purposes of county, city, and town taxation, the shares of stock shall be listed at the residence of the stockholder.

Bills of Exchange and Promissory Notes. Protest is not required in order to hold the maker or endorser of a promissory note, or the acceptor of a bill of exchange, but it is necessary to hold the drawer or endorser of the bill of exchange. Three days of grace are allowed. Unless the contrary be plainly expressed, the endorser of any bill, negotiable bond, or promissory note is liable as a surety, and no demand upon the maker is necessary previous to bringing an action against the endorser. But this does not apply to bills of exchange, whether inland or foreign, nor to notes which are made and become operative as contracts beyond the limits of the State, nor to endorsement made out of this State. It applies in those cases only where not only the endorsement in question, but all antecedent endorsements were made within this State. A note signed and endorsed in another State, but which was never delivered until negotiated in this State is governed by the laws of this State, and under it, no demand, protest, or notice of non-payment is required to bind the endorser. All bonds, bills, and notes for money with or without seal, and expressed or not to be payable to order or for value received, are negotiable in like manner, as are inland bills of exchange by custom of merchants of England. In all cases where any surety or endorser on any note, bill, bond, or other written obligation, shall consider himself in danger of loss in consequence of his contingent liability either from the insolvency or misconduct of the principal in said note, bill, bond, or other written obligation, or from the negligence of the payee or holder, of any such instrument, it shall be lawful for such surety or endorser, at any time after such note, bill, bond, or other written obligation shall have become due and payable, to cause written notice to be given to the payee or holder of any such paper or obligation, and to use all reasonable diligence to save harmless such surety or endorser. (This shall not apply to official bonds, or bonds given by any person acting in a fiduciary capacity.) Should the payee or holder of any such note, bond, bill, or other obligation refuse or fail within thirty days from the service of said notice to bring suit in the appropriate court, in an effort to save harmless such surety or endorser, such refusal or failure to sue shall operate as a discharge of such surety or endorser from all liability whatever on any such note, bond, bill, or other written obligation, provided that this notice shall not have the effect to discharge from liability any co-surety who does not join in such notice, provided further that this bill shall not apply to holders of such note, bond, bill, or other written obligation, who hold the same as collateral surety or in trust. Such notice shall be served by the sheriff or his deputy, who shall return it to the party for whose benefit the notice was issued, which shall be evidence of the fact in all courts. January 1st, January 19th, February 22d, May 10th, May 20th, July 4th, first Monday in September, and the day appointed by the Governor as a Thanksgiving day, and December 25th of each and every year, are public holidays, and whenever any such holiday shall fall upon Sunday the Monday following shall be public holiday, and papers due on such Sundays or Mondays shall be payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 o'clock on Saturday, when that entire day is not a holiday. (*See Days of Grace.*)

Chattel Mortgages. It is a misdemeanor for one to dispose of property covered by a chattel mortgage with intent to defeat the mortgagee's rights. Chattel mortgages and conditional sales of personal property are not valid against third persons until registered.

Conditional Sales. All conditional sales of personal property in which the title is retained by the bargainor must be reduced to writing and registered in the same manner, for the same fee, and with the same effect, as is provided for chattel mortgages; otherwise they are inoperative as against creditors and purchasers, for value, in so far as they reserve the title in the vendor.

Contracts. All contracts which by law are joint only, shall be construed to be joint and several. In all cases of joint obligations, suit may be brought against one or more of those who are liable. Choses in action are assignable, and suit upon them must be brought by the real party in interest. (*See Statute of Frauds.*)

Costs. The plaintiff is required to pay his costs to the officers as their services are performed. The clerks of the superior court usually require a deposit of from $10 to $20 to be made at the institution of the suit. Besides, the plaintiff must file a prosecution bond with the clerk in the sum of $200, to pay the defendant's costs, if he shall be cast in the suit. If he recovers he is entitled to his costs, but no allowance is made to cover expenses of litigation such as attorney's fees. Upon it being made to appear by affidavit that the plaintiff is a poor person and unable to give bond, and upon the certificate of an attorney-at-law that he has examined the plaintiff's case, and that in his opinion the plaintiff has a meritorious cause of action, such plaintiff is permitted to sue without giving a prosecution bond, and no officer can require of him any fee, and he can recover no costs, except in case of recovery.

Days of Grace. All bills of exchange payable within the State at sight, or at a future day certain, or in which there is no express stipulation to the contrary, shall be entitled to days of grace as the same are allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date, or sight. Provided, that no days of grace shall be allowed on any bills of exchange, promissory note or draft, payable on demand.

Equity of Redemption. After a sale by order of the court or by virtue of a power of sale of mortgaged premises, there is no equity of redemption. An equity of redemption of lands may be sold under execution. Such equity of personal property can be reached only by supplementary proceedings, or by action.

Executions. At any time within three years after docketing of judgment, or after the issue of the last execution, judgments may be enforced by execution without application to court, by the judgment creditor, or in case of his death by his personal representative duly appointed; after three years from the docketing or date of issue of last execution, only by leave of court, upon satisfactory proof that the judgment has not been paid. Executions issuing from the superior court may issue immediately after the term at which judgment was rendered and shall be returnable to the next term thereof. Issuing from a justice's court they are returnable in sixty days.

Exemptions. Articles of personal property not to exceed the value of $500, and real estate not to exceed $1,000 in value, to be selected by the owner thereof, and to be valued by three sworn appraisers, provided he be a resident of the State. The homestead is not exempt from liability to be sold for contract made for the purchase of the same, nor for taxes. The widow and infant children are entitled to the homestead until the youngest child reaches the age of twenty-one years. The statute of limitations shall not run against any judgment owing by the owner of a homestead or homestead interest, during the existence of such homestead or homestead interest, whether the same has been or shall hereafter be allowed, assigned, or set apart under execution or otherwise.

Foreign Judgments may be enforced by civil action. They are conclusive between the parties if there has been proper personal service upon the defendant and can not be attached collaterally except for fraud. A judgment to be used in evidence must be certified as required by the act of Congress.

Frauds, Statute of. No action shall be brought whereby to charge an executor or administrator upon a special promise to answer damages out of his own estate or to charge any defendant upon a special promise to answer the debt, default, or miscarriage, of another person unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party charged therewith, or some other person thereunto by him lawfully authorized. All contracts for the sale of land, and all leases and contracts for leasing land for the purposes of digging gold or other minerals, or for mining generally, of whatever duration, and all other leases and contracts for leasing lands, exceeding in duration three years from the making thereof, shall be void unless put into writing and signed by the party to be charged therewith, or by some person by him lawfully authorized thereto. No acknowledgment or promise shall be received as evidence of a new or continuing contract, whereby to take the case out of the operation of the statute of limitations, unless the same be contained in some writing signed by the party to be charged thereby. But this shall not alter the effect of any payment of principal or interest.

Free Traders. Every married woman of the age of twenty-one years and upward, with the consent of her husband, may become a free trader: 1. By antenuptial contract proved and registered; or, 2. by signing with her husband a writing in the form prescribed by statute, or some equivalent form, signifying her intention, with his consent, of becoming a free trader from the time of the registration of such instrument, she becomes a free trader.

Interest. The legal rate of interest is 6 per cent. Taking, receiving, or charging a greater rate, either before or after the interest may accrue, when knowingly done, shall cause a forfeiture of the entire interest. The person or corporation by whom it is paid may recover back twice the amount of interest paid in the nature of an action for debt, commenced within two years after payment. In any action brought to recover upon the note or other evidence of debt, the defendant may plead by way of counterclaim twice the amount of interest paid, and also the forfeiture of the entire interest. No person shall recover any costs who may endeavor to recover upon a usurious contract.

Judgments. Judgments of the superior court are liens upon the lands and interests of a debtor within the county from the date of docketing the same for the space of ten years. If three years shall elapse since the date of the last execution the judgment becomes dormant, and execution shall only be issued thereon by leave of the court upon motion, with personal notice to the adverse party, and after satisfactory proof that the judgment or some part thereof remains unsatisfied. Transcripts of judgments obtained from a justice of the peace may be docketed in the superior court, and from that time the judgment shall be a judgment of the superior court in all respects. All judgments rendered at a term of the superior court bear date as of the first day of the term, and there is no priority between them in the county of their rendition. A transcript of a docketed judgment properly certified by the clerk, may be filed in the clerk's office of any other county, when it becomes a lien upon the debtor's real estate in that county from the date of the docketing in such county. Judgments of the supreme court may be docketed in the superior court of any county of the State, and when so docketed their lien shall be the same as judgments of the superior court. Judgments of no court constitute a lien upon the personal property before levy.

Limitations. Within ten years: 1. An action upon a judgment or decree of any court of this State, or of the United States, or of any State or Territory thereof, from the date of rendition of said judgment or decree. But no such action shall be brought more than once, nor have the effect to continue the lien of the original judgment. 2. An action upon a sealed instrument against the principal thereto. 3. An action for the foreclosure of a mortgage or deed in trust for creditors, with a power of sale of real property where the mortgagor or grantor has been in possession of the property must be brought within ten years after foreclosure of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same. 4. An action for the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him shall have been in possession must be brought within ten years after the right of action accrued. Within seven years: 1. An action on a judgment rendered by a justice of the peace, from the date thereof. 2. By any creditor of a deceased person against his personal or real representative, within seven years net next after the qualification of the executor or administrator, and his making the advertisement required by law for creditors of the deceased to present their claims, where no personal service of such notice in writing is made upon the creditor, and the creditor, thus barred of a recovery against the representative of any principal debtor, shall also be barred of a recovery against any surety of such debt. Within six years: 1. An action upon the official bond of any public officer. 2. An action against any executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final accounts, by the proper officer, and the filing of such audited accounts as

required by law. 3. An action for injury to any incorporeal hereditaments. Within three years: 1. An action upon a contract, obligation, or liability arising out of a contract, express or implied, except those mentioned in the preceding sections. 2. An action upon a liability created by statute, other than a penalty or forfeiture, unless some other time be mentioned in the statute creating it. 3. An action for trespass upon real property. If the trespass is a continuing one, an action must be commenced within three years from the original trespass. 4. An action for taking, detaining, converting, or injuring any goods or chattels, including action for their specific recovery. 5. An action for criminal conversation, or for any other injury to the person or rights of another not arising on contract, and not hereinafter enumerated. 6. An action against the sureties of any executor, administrator, collector, or guardian on the official bond of their principal, within three years after the breach thereof complained of. 7. An action against bail, within three years after judgment against the principal, but bail may discharge himself by a surrender of the principal at any time before final judgment against the bail. 8. Fees due to any clerk, sheriff, or other officer, by the judgment of the court, within three years from the time of the judgment rendered, or of the issue of the last execution thereof. 9. An action for relief on the ground of fraud or mistake in cases which heretofore were solely cognizable by courts of equity, the cause of action in such cases not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such fraud or mistake. Within one year: 1. An action against a sheriff, coroner, or constable, or other public officer, for a trespass under color of his office. 2. An action upon a statute for a penalty or forfeiture, where the action is given to the State alone, or in whole or in part to the party aggrieved, or to a common informer, except where the statute imposing it prescribed a different limitation. 3. An action for libel, assault, battery, or false imprisonment. 4. An action against a sheriff or other officer for the escape of a prisoner, arrested or imprisoned on civil process. Within six months, an action for slander. An action for relief not herein provided for must be commenced within ten years after the cause of action shall have accrued. The limitations prescribed in this synopsis shall apply to civil actions brought in the name of the State, or for its benefit, in the same manner as to actions by or for the benefit of private parties. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the latest item proved in the account on either side. The statute of limitations does not run against any judgment owing by the owner of a homestead as to such homestead, whether the same has been allotted or not. No acknowledgment or promise shall be received as evidence of a new or continuing contract whereby to take the case out of the operation of this title, unless the same be contained in some writing signed by the party to be charged thereby. But this shall not alter the effect of any payment of principal or interest. A personal representative is not obliged to plead the statute of limitations. If, when a cause of action accrues against any person, he shall be out of the State, an action may be commenced against him within the times fixed by law, as above set forth, after the return of such person into this State. If, after such a cause of action has accrued against anyone, he shall depart from and reside out of the State, or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action. The statute does not run in favor of an undisclosed partner until he becomes known to the plaintiff.

Married Women. A married woman may hold property free from the debts of her husband. But she can make no contract to affect her real or personal property, except for her necessary personal expenses, or for the support of her family, or to pay her antenuptial debts, without the consent in writing of her husband, unless she be a free trader. She can not dispose of her real property without her husband's consent, but she may devise her real estate without his consent. The liability of a *femme sole* for any debt owing or contract made, or for damages incurred by her before the marriage, shall not be impaired by such marriage. No man by marriage shall incur any liability for debts owing or contracts made, or for wrongs done by his wife before marriage. (*See Deeds, Exemptions, and Free Traders.*) Every married woman, upon the death of her husband intestate, or in case she shall dissent from his will, shall be entitled to an estate for her life in one-third in value of all the lands, tenements, and hereditaments whereof her husband was seized and possessed at any time during the coverture. A wife who murders her husband, forfeits her right to dower. Dower and homestead rights in the husband's lands are forfeited by her elopement with an adulterer, by her abandonment of her husband without just cause, and by a divorce *a vinculo*, or by a divorce *a mensa et thoro* granted at the suit of the husband. The widow is entitled to a year's support to be assigned her to the value of $300, and $100 in addition thereto for every member of the family, besides the widow, under fifteen years of age. Where the personal estate of the husband exceeds in value $2,000, a larger year's allowance may be made to the widow, in no case to exceed one-half the annual net income of the deceased for three years next preceding his death.

Mortgages. Mortgages and deeds of trust are required to be registered within six months and are only valid as against creditors or purchasers for a valuable consideration from the date of registration, but a mortgage is valid against the maker without registration. Mortgages of incorporate companies upon their property or earnings, whether in bonds or otherwise, hereafter issued, shall not have power to exempt the property or earnings of such corporations from execution for the satisfaction of any judgment obtained in courts of the State against such corporation, for labor performed nor for costs committed by such corporation, its agents or employees, whereby any person is killed or any person or property injured. When there are two or more mortgagees or trustees the survivor is authorized to execute power of sale in the mortgage or deed of trust, and so is the executor or administrator of a deceased mortgagee. When the mortgage or deed of trust contains a power of sale, it may be exercised after the death of the mortgagor. In case of sale of real estate in deed of trust or mortgage the premises must be described in the notice of sale subsequently as they are described in the deed of trust or mortgage, and the sale may be made through an agent or attorney for that purpose, appointed orally or in writing, whether the mortgagee or trustee be present or not. Any deed of trust or mortgage, which has been registered in the manner required by law, may be discharged and released in the following manner, to wit: The trustee or mortgagee, or his or her legal representative, or the duly authorized agent or attorney of such trustee, mortgagee, or legal representative may, in the presence of the register of deeds or his deputy, acknowledge the satisfaction of the provisions of such trust or mortgage, whereupon it shall be the duty of the register or his deputy forthwith to make upon the margin of the record of such deed or mortgage an entry of such acknowledgment of satisfaction, which shall be signed by the said trustee, mortgagee, or legal representative or attorney, and witnessed by the register or his deputy, who shall also affix his name thereto, and every such entry, thus acknowledged and witnessed, shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee, or representative in such deed or mortgage, as if a deed of release or conveyance thereto had been duly executed and recorded. Upon the exhibition of the mortgage, accompanied by the bond or note secured thereby, to the register of deeds, with the indorsement of payment and satisfaction thereon by the payee, assignee, or mortgagee, the register shall cancel the mortgage, by entry of satisfaction on the margin. The purchaser of real estate who does not pay the whole of the purchase money at the time when he takes the deed for title, may make a mortgage for securing the payment of such purchase money, or such part thereof as may remain unpaid, which shall be good and effectual against his wife as well as himself without requiring her to join in the execution of such mortgage.

Notes. (*See Bills of Exchange.*)

Suits. (*See Actions.*)

Supplementary Proceedings. Upon an affidavit showing: 1. The return of the execution unsatisfied in whole or in part. 2. The want of known property liable to execution. 3. The existence of property, choses in action, and things in value (belonging to the judgment debtor) unaffected by any lien, and incapable of levy, an order may be obtained for the examination of the judgment debtor concerning his property. Supplementary proceedings may likewise be instituted before the return of the execution upon an affidavit showing the foregoing facts, and also that the judgment debtor has property which he unjustly refuses to apply to the satisfaction of the judgment. Third parties may also be examined, if it appears by affidavit that they owe the defendant more than $10. Witnesses may be examined. Property discovered may be applied to the execution. A receiver may be appointed, and transfers by debtors enjoined.

Taxes. The lien of the State, county, and municipal taxes, levied for all purposes in each year attaches to all property subject to such taxes on the 1st day of June annually. All personal property subject to taxation shall be liable to be seized and sold for taxes. All taxes are due on the first Monday of September in each year. If the party charged has personal property of the value equal to the tax charged against him, the sheriff or tax collector shall seize and sell the same as he is required to sell other property under execution. If the party charged has not personal property to be found in the county, of sufficient value, the real estate of the delinquent shall be levied upon and sold. A sale is made to the person who will pay the amount of taxes with all the expenses for the smallest part of the land. The delinquent, his agent or attorney may retain possession of the property for twelve months after sale, and within that time redeem it by paying or tendering the purchaser the amount paid by him, and 20 per cent in addition thereto. When land is sold for taxes, the sheriff is required to give to the purchaser a certificate showing the sale. It may be foreclosed as a mortgage, provided proceedings for this purpose are begun within two years. The purchaser can demand a deed from the sheriff after the expiration of one year from the day of sale. Actions to recover land purchased for taxes must be brought within three years from the date of the sheriff's deed. A purchaser at tax sale gets a good title notwithstanding the land is not listed in the name of the owner, provided the owner has not paid the tax. A sheriff's deed is presumptive evidence that the property was subject to taxation, that the taxes were not paid, that the property conveyed has not been redeemed from the sale, that it has been listed and assessed, that the taxes were levied according to law, that the property was sold for taxes as stated in the deed, that notice has been made and due publication had before the time of redemption has expired. And it shall be conclusive evidence that the manner in which the listing, assessment, levy and sale were conducted in all respects as the law directed, that the grantee named in the deed was the purchaser, or his assignee and that the requisites of the law were complied with by all the officers connected with the listing and sale, except in regard to the points named above, wherein the deed shall be presumptive evidence only.

Wills. No last will or testament shall be good or sufficient in law to convey or give an estate, real or personal, unless such last will shall have been written in the testator's lifetime, and signed by him, or by some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least. No one of them shall be interested in the devise or bequest of the said estate, except as hereinafter provided. Or, unless, such last will and testament be found among the valuable papers and effects of any deceased person, or shall have been lodged in the hands of a person for safe keeping, and the same shall be in the handwriting of such deceased person, with his name subscribed thereto, or inserted in some part of such will; and if such handwriting shall be proved by three credible witnesses, who verily believe such will and every part thereof is in the handwriting of the person whose will it appears to be, then such will shall be sufficient to give and convey real and personal estate. No person shall be capable of disposing of real or personal estate by will, nor be allowed to qualify as executor of a will until he shall have attained the age of twenty-one years. A married woman owning real or personal property may dispose of the same by will. Children born after the making of the parent's will, and whose parents shall die without making any provision for them, shall be entitled to such shares and proportion of said parent's estate as if he or she had died intestate, and the right of any such afterborn child shall be a lien on every part of the parent's estate until his several share thereof is set apart. No person, on account of being an executor of a will, shall be incompetent to be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof. If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, estate, interest, legacy, or appointment of, or affecting any real or personal estate shall be thereby given or made, such devise, estate, interest, legacy, or appointment shall, so far as only concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person, or wife, or husband, be void; and such person so attesting shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof. All nuncupative wills must be proved by at least two witnesses who were present when it was made, and who must state that they were especially requested to bear witness thereto by the testator himself. It must also be proved that such will was made in the testator's last sickness, in his own house, or where he had previously resided for at least ten days, unless he die on a journey or from home. Nor shall such will be proved by the witness after six months from the making thereof, unless it was put in writing within ten days from such making thereof; nor shall it be proved till a citation has been issued or publication made for six weeks in some newspaper, to call in the widow and the next of kin to contest it if they deem proper. A holograph will, or one altogether in the handwriting of the testator, must be proved by three witnesses, who must state that they believe that such will and every part thereof is in the handwriting of the testator, whose name must be signed to it or inserted in some portion of it. It must further appear that such will was found among the valuable papers of the testator, or was lodged in the hands of some person for safe keeping. Other wills, those ordinarily made, must be proved by two witnesses, and if one be dead or otherwise unable to testify, his handwriting and that of the testator must be proved.

SYNOPSIS OF THE LAWS OF NORTH DAKOTA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. NEWMAN, SPALDING & STAMBAUGH, Attorneys at Law, Fargo. *(See Card in Attorneys' List.)*

Accounts. In an action on account the account must be proved as any other fact by testimony or depositions.

Acknowledgments of deeds or other instruments may be made at any place without the State, but within the United States and within the jurisdiction of the officer, before a justice, judge, or clerk of any court of record of the United States, or clerk of any court of record of any State or Territory, a notary public, any other officer of the State or Territory where made authorized by its laws to take acknowledgments, a commissioner appointed for the purpose by the governor of this State; without the United States, before a minister, commissioner, or charge d'affaires of the United States resident and accredited in the country where made, a consul, vice-consul, or consular agent of the United States resident where made, a judge of a court of record of the country where made, or a notary public of such country. Certificate must be authenticated by name and official designation and seal of officer. The form is statutory, and is substantially as follows:

State of..... } ss.
County of..... }

On this .... day of ... ., in the year ....., before me personally appeared ....., known to me to be the person.. who is (are) described in, and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

Acknowledgment of corporation must be substantially in the following form:

State of..... } ss.
County of..... }

On this ... day of ....., in the year ....., before me (here insert the name and quality of the officer), personally appeared ...., known to me (or proved to me on the oath of .....,) to be the president (or secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

Acknowledgment of an attorney in fact must be substantially in the following form:

State of..... } ss.
County of..... }

On this .... day of ... ., in the year ....., before me (here insert the name and quality of the officer), personally appeared ....., known to me (or proved to me on the oath of .....,) to be the person who is described in, and whose name is subscribed to the within instrument as the attorney in fact of ....., and acknowledged to me that he subscribed the name of ..... thereto as principal, and his own name as attorney in fact.

Actions. Actions in courts of record are commenced by service of summons on the defendant, requiring him to answer within thirty days, and if no appearance is made within that time, the plaintiff may take judgment by default upon the expiration of thirty days. When property of defendant is attached, and in actions affecting real property, and for divorce, summons may be served by publication. Personal service outside the State is equivalent to service by publication and service is complete at the expiration of fifteen days after such personal service. Judgment by default may be taken at the expiration of sixty-six days after the first publications of summons, forty-five days after personal service outside the State, and thirty days after personal service in the State.

Administration of Decedent's Estate. Administration is granted: 1, to surviving husband or wife; 2, his heirs; 3, his creditors. An executor or administrator must be over twenty-one years of age, a good faith resident of this State. An administrator cannot be a surviving partner. A married woman can not be appointed administratrix. Bond must be given in such sum as the court requires. Debts are paid as follows: 1, expenses of administration; 2, last sickness and funeral; 3, allowance of family in excess of exempt property; 4, debts having preference under the laws of the United States; 5, debts which are liens upon specific property, in the order of their priority, to the extent of the property subject to the lien; 6, all other demands, which includes deficiency on secured debts not paid by sale of the property held as security. Notice must be given of the time of presenting claims, which must be presented within six months after notice if the estate exceeds $5,000, and four months when it does not. Exempt property is set apart to the family.

Affidavits. An affidavit may be made before any person authorized to administer an oath.

Aliens may acquire, hold and transfer real estate same as citizens.

Appeals. Appeals from the district court to the supreme court may be taken from any judgment within one year after rendition of the same, and execution may be stayed pending such appeal by the filing of the proper supersedeas bond.

Arbitration. Parties may submit controversies to arbitration under statutory provision.

Arrest. No person can be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be provided by law, or in cases of tort, or where there is a strong presumption of fraud. No female can be arrested except for injury to person, property, or character. An order of arrest may be granted by the order of the court in which the action is brought, when it appears by affidavit that the case is one of those in which arrest is provided for.

Assignments. *(See Insolvency.)*

Attachment. In actions for recovery of money only, and for the wrongful conversion of personal property, and for damages arising out of contract, or otherwise, attachment may issue against the property of the defendant, in cases provided by law. An action may be commenced before the claim is due, and property of the defendant attached when he has assigned or disposed of his property with intent to defraud his creditors, or is about to do so. *(See Garnishment.)*

Banks. Associations for carrying on the business of banking may be formed by any number of natural persons not less than three, two-thirds of whom shall be residents of the State.

The persons uniting to form such an organization shall, under their hands, make an organization certificate, specifying:

1. The name assumed by such association, which shall not be that of any other bank in the State.
2. The place where the business of discount and deposit is to be carried on.
3. The amount of capital stock and the amount into which its shares are to be divided.
4. The names and places of residence of the shareholders and the number of shares held by each of them.
5. The period at which such bank shall commence and terminate business.

The organization certificate must be acknowledged and recorded in the office of the Register of Deeds in the county where such bank may be established, and transmitted to the secretary of State, who must record and preserve the same.

Upon making and filing said articles and certificate the association shall become a body corporate and have power:

1. To adopt and have a corporate seal.
2. To have succession for a period of twenty-five years.
3. To make contracts.
4. To sue and be sued, complain and defend in any court of law or equity.
5. To elect or appoint directors, two-thirds of whom shall be residents of this State. By its board of directors to appoint a president and vice-president, members of said board, a cashier and other assistants, and define their duties.
6. To prescribe, by its board of directors, by-laws, and regulate its business.
7. To exercise, by its board of directors, all powers necessary to carry on its business of banking.

Such banking association shall have power to purchase, hold, and convey real estate only for the following purposes:

1. Such as may be necessary for its immediate accommodation, not exceeding 30 per cent of its capital.
2. Such as shall be mortgaged to it as security for debts previously contracted, or as security for loans made, but no association shall carry among its assets such loans in excess of one-half its capital stock, and banks have no power to guarantee such loans when transferring same.
3. Such as shall be conveyed to it in satisfaction of debts previously contracted.
4. Such as shall be purchased by it at sales under judgments, decrees, or mortgages held by it or to secure debts held by it, but such real estate shall not be held longer than five years.

Capital Limit. The minimum of capital required depends on the population of the town in which the bank is situated, and can not be less in any case than $5,000. Fifty per cent must be paid in before commencing business; the balance in monthly installments of 10 per cent each. The organization certificate and authorization of the secretary of State must be published.

Shares may be sold for non-payment of installments.

Shares shall be $100 each, shall be deemed personal property, and may be transferable on the books as prescribed by the by-laws, and transfer is only valid between parties when transferred on books.

The articles of association may provide for increase of capital. No increase shall be valid until all is paid in cash and certified under oath to secretary of State, and his approval thereof.

Dividends may be declared semi-annually, but one-tenth of net profits must be carried to the surplus fund until same amounts to 20 per cent of capital.

Qualifications of Directors. Every director must own at least ten shares in his own right, must be sworn, and oath filed with public examiner.

Reports. At least four reports shall be made each year to the public examiner and published, and the examiner is empowered to call for special reports at any time. Penalty of $200 for not making same.

Reserve Fund. Association shall at all times have on hand in available funds an amount equal to 20 per cent of its deposits. Whenever such funds get below 20 per cent of deposits, liabilities must not be increased. Examiner may require reserve fund to be made good, and failure so to do for thirty days subjects to a penalty of not less than $100 nor over $500, to be imposed by public examiner.

Responsibility of Shareholders. Each shareholder shall be individually responsible, equally and ratably, for all contracts and debts to the extent of his stock and unpaid installments.

Security. No loans shall be made on security of shares of its own stock. Association can not purchase or hold such stock except to prevent loss.

Total Loan to One Concern. Not to exceed 15 per cent of capital paid in may be loaned to any one borrower, including the individual members of a company or firm.

No banking business can be done otherwise than under this law.

Violations of the provisions of the act, and false entries and the receipt of deposits when insolvent, are punished by fine and imprisonment.

Public examiner is ex-officio superintendent of banks.

If the bank is deemed insolvent the examiner may apply to the district court for the appointment of a receiver.

Bills of Lading. There is no legislation with reference to this subject.

Chattel Mortgages. A chattel mortgage must be subscribed by the mortgagor in the presence of two witnesses, and no other formality is required to entitle the mortgage to be filed. It is void against creditors of the mortgagor and subsequent purchasers and encumbrancers in good faith and for value unless filed in the office of the register of deeds, and will cease to be valid, as against creditors of the mortgagor and subsequent purchasers and encumbrancers in good faith, after the expiration of three years, unless within ninety days next preceding the expiration of such time, a copy of the mortgage with a sworn statement of the debt remaining be filed in the office of the register of deeds in which the original mortgage was filed. The term "creditor" in this connection is one who becomes a creditor after the making and before the filling of the mortgage. A chattel mortgage on property not yet acquired, or in existence, is valid, but as to crops is only valid on the crop next maturing after the delivery of the mortgage, except when it is given to secure the purchase price or rental of the premises upon which such crops are grown, in which case the mortgage may cover the crops for a period of years. Chattel mortgages containing power of sale may be foreclosed by advertisement during the life of the mortgagor; they may be foreclosed by action before or after his death. Mortgages on crops are foreclosed by sale of crop in any usual market, when mortgage contains stipulation for such foreclosure. The interest of the mortgagor in mortgaged property may be sold on execution. A chattel mortgage, taken by an insurance company to secure the payment of premiums, is void, unless on a paper separate from the application.

Collaterals. There are no statutory provisions with reference to collaterals.

Contracts. The civil code contains a codification of the law on the subject of contracts, not materially different from the rules of the common law.

Conveyances. Conveyances of real estate or mortgages thereof, must be by an instrument in writing, subscribed by the party disposing of the

same, or by his agent having written authority. To entitle such conveyance to be recorded, it must be acknowledged as provided by law. (*See Acknowledgments.*) Witnesses or seals are not required. Instrument must be recorded to make it valid as against subsequent purchasers or incumbrancers in good faith for value where conveyances are first duly recorded. Husband need not sign conveyance of wife's property, nor wife that of husband's, unless it is a homestead.

Corporations. Corporations may be formed for any purpose for which persons may lawfully associate, and, except railroads and insurance companies, may be formed by the association of three persons, and the proper filing of articles of incorporation. Transfers of stock must be made upon the books of a corporation, and are only valid as between the parties unless so made. A creditor of a corporation having secured judgment, issued execution against the corporation thereon, may, when the same is returned unsatisfied, have a receiver appointed for the property of the corporation, and the district court is then empowered to distribute the property of the corporation among its creditors, and a settlement of the judgment, which is the basis of the proceedings, does not prevent the continuance of the action, which may be continued by any creditor. Corporations may also be dissolved by action on the part of the State, or in case the attorney general fails to commence action after proper application, by action on the part of the creditor or stockholder. Foreign corporations are prohibited from transacting any business in this State, acquiring, holding, or disposing of any property, real or personal, until they have filed in the office of the secretary of State a copy of their articles of incorporation, together with a power of attorney, appointing the secretary of State and his successors their attorney, on whom process may be served. Insurance corporations must file such power of attorney and articles in the office of the insurance commissioner. All contracts made by a corporation or its agent, while it is in default in the filing of such papers, are wholly void as to the corporation, but may be enforced against it, and the directors and stockholders are personally liable on such contracts. Insurance companies must have $100,000 capital paid in cash. Conveyances or other instruments affecting real estate may be executed by any officer authorized by the by-laws of the corporation, and in the absence of such by-laws, the president or secretary of such corporation, or the president, secretary, or cashier of any banking house, or trust company, may acknowledge and execute such instrument, who must sign the corporate name by himself as such officer, and it must be attested by the seal and signature of the secretary.

Courts. There are seven judicial districts. The district courts have exclusive jurisdiction in equity and at common law above $200, and where the title or boundary of real property is in question. Two terms of district court are held each year in all organized counties. Each organized county has a county court, and the county courts have exclusive probate jurisdiction. Justices' jurisdiction is $200.

Days of Grace are not allowed.

Depositions. Depositions may be taken upon commission issued by a court of record, or upon notice, which latter is the usual method. The deposition must be written by the officer or in his presence by the witness, or some disinterested person, and must be subscribed by the witness. The officer taking the deposition must annex thereto his certificate showing: 1. That the witness was sworn to testify the truth, the whole truth, and nothing but the truth. 2. That the deposition was reduced to writing by some proper person, naming him. 3. That the deposition was written and subscribed in the presence of the officer certifying thereto. 4. That the deposition was taken at the time and place specified in the notice. The deposition so taken must be sealed, endorsed with the title of the cause, with the name of the officer taking the same, and by him addressed and transmitted to the clerk of the district court where action or proceeding is pending.

Descent and Distribution of Property. 1. If a decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the children living and the issue of the deceased child or children by right of representation. 2. If the decedent leave no issue, and the estate does not exceed in value the sum of $5,000, all the estate goes to the surviving husband or wife, and all the property in excess of $5,000 in value, one-half thereof goes to the surviving husband or wife, and the other one-half goes to decedent's father, and if he be dead, then to the decedent's mother. If the decedent leave no issue, nor husband, nor wife, the estate must go to the father, and if he be dead, then to the mother. If the decedent leave a surviving husband or wife, and no issue, and no father nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife. 3. If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation. 4. If the decedent leave no issue, nor husband, nor wife, nor father, and no brother or sister is living at the time of his death, the estate goes to his mother to the exclusion of the issue, if any, of deceased brothers or sisters. 5. If the decedent leave no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming to an ancestor more remote. However, if the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation. 6. If, at the death of such child, who dies under age, not having been married, all the other children of the parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children of the same parent; and if all issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

Divorce. Divorce can be granted for any of the following causes: 1. Adultery. 2. Extreme cruelty. 3. Willful desertion. 4. Willful neglect. 5. Habitual intemperance. 6. Conviction for felony. 7. Incurable insanity continuing for two years with confinement in the hospital for the insane. Willful desertion, willful neglect, and habitual intemperance must continue for one year before either is a ground for divorce. Service of summons is made and judgment taken as in other cases. (*See Actions.*) Corroborative evidence is required and may be taken by deposition. Plaintiff must have been a resident in good faith for one year before commencement of action.

Dower. Dower is abolished.

Executions. Judgment creditor may take out execution at any time within ten years after judgment or the return of previous execution. Real property sold on execution may be redeemed within one year.

Exemptions. Absolute exemptions are family pictures, pew in house of worship, a lot or lots in burial ground, family bible and school books used by the family and other books used as a part of the family library, and not exceeding $100 in value, all wearing apparel and clothing of debtor and his family, one year's necessary supply of provisions for debtor and family, provided or growing, or both, and one year's fuel, and the homestead, not exceeding $5,000 in value, except against mechanics' or laborers' liens thereon, debts secured by mortgage thereon, debts for purchase money thereof, and taxes thereon. Husband and wife must join in conveyance of homestead of either. In addition to said absolute exemptions, debtor may select from all other of his personal property, goods, chattels, merchandise, money or other personal property up to $1,500 in value, to be ascertained by appraisal. No personal property, except absolute exemptions, is exempt from execution for laborers' or mechanics' wages (or physicians' bills after six months), or for property obtained under false pretenses. No property is exempt from execution for the purchase money thereof.

Fraud. Contracts exempting from responsibility for fraud are declared by statute to be void.

Garnishment. A creditor may proceed by garnishment. No judgment can be rendered against a garnishee on: 1. Upon a negotiable note, bill, draft, note or other security. 2. By reason of money collected by him as sheriff or other officer. 3. By reason of money in his hands as a public officer, for which he must account to the defendant as a public officer. 4. By reason of money, or other thing, owing from him to the defendant which shall not have become absolutely due, but judgment may be rendered for any money or other thing owing to the defendant after it shall have become due absolutely.

Holidays. Holidays are every Sunday, January 1st, February 12th, February 22d, May 30th, July 4th, December 25th, every day on which an election is held throughout the State, and every day appointed by the president of the United States, or by the governor of the State, for a public fast, thanksgiving, or holiday. If January 1st, February 22d, July 4th, or December 25th, falls upon Sunday, the Monday following is a holiday. All other days are business days, and any act of a secular nature appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, may be performed upon the next business day, with the same force and effect as if it had been performed upon the day appointed.

Husband and Wife. (*See Married Women.*)

Insolvency. Any person residing in this State and owing debts, provable in insolvency, to the amount of $500 may petition the district court of the county in which he resides for a discharge from his debts. He must submit a schedule of all his creditors, the sums owing each, a full and true inventory of all his estate. The court thereupon directs notice given to all creditors. Insolvency proceedings may be commenced by one or more creditors against a debtor. 1. Who departs from this State with intent to defraud his creditors, or being absent remains absent with such intent. 2. Who conceals himself to avoid the service of legal process. 3. Who conceals any of his property to avoid its being seized on legal process. 4. Who transfers any of his property with intent to defraud, hinder or delay his creditors. 5. Who being insolvent, or being in contemplation of insolvency, makes any payment, gifts, grant, sale, conveyance or transfer of his property, or procures or suffers a judgment to be obtained against him, or procures or suffers his property to be taken on legal process with intent to give preferences to creditors, or who has suffered an execution of $500 or more to be returned unsatisfied, or being a merchant or tradesman has suspended and not resumed payment of commercial paper for thirty days for $500 or more. The majority of creditors in value select the assignee. The assignee must convert the property into money under the supervision of the court, and distribute the proceeds, pro rata, among the creditors in the order of preference provided by statute. Within eighteen months after the first dividend the assignee must make a second and final dividend. After the estate is closed, debtor may be discharged by order of the court from his debts. No such discharge is valid if debtor has sworn falsely in his inventory attached to the schedule, or if after the presentation of petition in insolvency he shall in any way transfer any of his property or collect any debts due to him, and shall not give a just account of it, or if he shall secrete any part of his estate, or any books or writing relative thereto, or fraudulently conceal the names of his creditors, or the amount due any of them, or if he shall pay or consent to the payment of any portion of the debt or demand of any of his creditors, or shall grant or consent to the granting of any gift or award to any such creditor, upon any express or implied contract or trust that the creditors so paid, or rewarded, should abstain, or desist, from opposing the discharge of such insolvent, or if he shall be guilty of any fraud whatever in the insolvency proceedings. (Superseded by National Bankrupt Law.)

Interest. *Usury.* The legal rate of interest is 7 per cent per annum, unless a different rate, not exceeding 12 per cent, is contracted for in writing, and contracts shall bear the same rate after as before due, unless otherwise expressed. It is usury to take more than 12 per cent per annum. A contract for usury forfeits all interest. If usury has been paid, twice the amount of interest and usury may be recovered back by action commenced within two years.

Judgments of courts of record are a lien on all real estate of the judgment debtor, except the homestead, for ten years from time such judgment is docketed in the clerk's office of the county where the land is situated.

Liens. Mechanics, laborers, and furnishers of material, machinery, or fixtures for improvement of real estate, have a lien therefor and must file a verified account of the claim, within ninety days from the date of the last item, in the office of the clerk of the district court.

Limitations. An action by the State of North Dakota respecting real property must be commenced within forty years. An action for the recovery of real property or the possession thereof must be commenced within twenty years. Actions other than for the recovery of real property can only be commenced within the following periods after the cause of action shall have accrued: 1. Within ten years: an action upon a judgment or decree of any court in the United States, or of any State or Territory within the United States, or on contract contained in conveyance or mortgage of real property. 2. Within six years: actions upon a contract, obligation or liability, express or implied. 3. Within three years: an action against an officer for breach of official duty. 4. Within one year: all actions against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process. 5. All other actions for relief in ten years. No acknowledgment or promise is sufficient evidence of a new or continued contract whereby to take the case out of the operation of the statute of limitation, unless the same be in writing, signed by the party to be charged thereby; but this does not alter the effect of any payment of principal or interest.

Married Women retain their own real and personal property, and may make contracts, sue and be sued as if sole. Neither husband nor wife has an interest in the property of the other except under the statute relating to the homestead; but neither can be excluded from the other's dwelling. They may enter into any engagement or transaction with each other, subject to the general rules which control the actions of persons occupying confidential relations with each other. Dower and curtesy are abolished. Neither husband nor wife, as such, is answerable for the acts of the other. The earnings of the wife are not liable for the debts of the husband. The separate property of the husband is not liable for wife's debts contracted before marriage; nor separate property of wife for husband's debts, but is liable for her own debts contracted before or after marriage. Women may be notaries public.

Mortgages of real property must be in writing, and executed as required in case of a grant of real property. Neither husband nor wife need join the other in mortgage except of homestead. If containing power of sale, mortgage of real property may be foreclosed by advertisement. If no power of sale in the mortgage, it must be foreclosed by action. Mortgagor may redeem from foreclosure sale within one year on payment of the sum for which the property is sold, with 12 per cent interest thereon from date of sale, and also all taxes paid by the purchaser and interest thereon at 12 per cent. Possession of real property sold upon foreclosure not delivered to purchaser until end of year of redemption, but purchaser may collect rents from tenant in possession during year of redemption. (*See Chattel Mortgages.*)

Negotiable Instruments. The civil code designates six classes of negotiable instruments: 1. Bills of exchange. 2. Promissory notes. 3. Bank notes. 4. Checks. 5. Bonds. 6 Certificates of deposit. When no time of payment is specified, they are payable immediately. When no place of payment is specified, they are payable at the residence or place of business, or wherever maker may be found. Bill or note maturing on a holiday becomes due on next business day. The apparent maturity of a bill of exchange payable at sight or on demand is, if it bears interest, one year after its date; if it does not bear interest, ten days after its date, in addition to sufficient time to forward it for acceptance. The apparent maturity of a note payable at sight or on demand, if it bears interest, is one year after its date; if it does not bear interest, six months after its date. A note payable at a certain time after sight or demand, such time is to be added to last named periods. Acceptance of a bill must be made in writing by the drawee or an acceptor for honor. To hold indorser, the instrument must be presented at maturity and notice of dishonor given. A negotiable instrument may contain an agreement to pay the current rate of exchange. A note made after July 1, 1899, payable at a bank is equivalent to an order to the bank to pay the same for account of the maker. (*See Days of Grace.*)

Powers of Attorney. Powers of attorney to convey real estate must be acknowledged and recorded, and can only be revoked by an instrument in writing acknowledged and recorded in the same office in which the power of attorney is recorded.

Probate Law. (*See Administration of Estates, Descent and Distribution of Property.*) The county court has exclusive original jurisdiction of all probate matters. A special administrator may be appointed to preserve and collect the property of the estate when there is delay in the appointment of an executor or administrator. Claims must be presented within the time fixed by law, which is six months after notice if the estate exceeds $5,000, and four months if it does not, and all claims not properly presented and filed in the county court for adjustment are barred, but the court may, for good cause shown, allow a claim to be filed after the expiration of the time stated in the notice. The provision barring claims does not prevent the foreclosure of a mortgage or other lien on specific property by civil action, and does not prevent the foreclosure of the real estate mortgage by advertisement prior to the time the county court obtains jurisdiction of the estate of the mortgagor. If a claim is rejected, the claimant may have a citation issue to the executor or administrator, and the question of the allowance or rejection of the claim is then tried in the county court, and a decree may be made, allowing or rejecting such claim, from which an appeal lies to the district court, where the matter is tried anew. No claim barred by the statute of limitation can be allowed. An executor or administrator, unless otherwise provided in the will, must give bond. Real and personal property is equally liable for the payment of the debts. The executor or administrator must take into his possession all the property of the decedent, real and personal, except the homestead and personal property not assets.

Protest. Notice of dishonor of a foreign bill of exchange can be given only by notice of protest. An inland bill of exchange is one drawn and payable within this State; all others are foreign. Notice of protest must be made by an instrument in writing, giving a literal copy of the bill of exchange with all that is written thereon, or annexing the original, stating the presentment and the manner in which it was made, the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any, and finally protesting against all parties to be charged. Protest must be made by a notary public, if with reasonable diligence one can be obtained, and if not, then by any reputable person in the presence of two witnesses. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment. A protest must be noted on the day of the presentment, or on the next business-day, but it may be written out at any time thereafter. Notice of protest must be made and given by the notary who makes the protest. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before the indorsement, protest must be made, and notice thereof given to him and all subsequent indorsers.

Replevin. Personal property may be replevied at the time the summons is issued, or at any time before answer. An undertaking approved by the sheriff must be given in double the value of the property.

Suits. (*See Actions.*)

Taxes become due and payable on the first day of November in each year. All unpaid taxes on real property become delinquent February 1st of each year. Unpaid taxes on personal property become delinquent November 1st of each year. Personal property taxes draw interest at the rate of one per cent per month after they become delinquent. A penalty of 5 per cent attaches to personal property taxes as soon as they become delinquent. A penalty of 3 per cent is added to taxes on real property when they become delinquent, and also if unpaid an additional penalty of 3 per cent on the first day of March following, an additional penalty of 3 per cent on the first day of June following, and a further penalty of 5 per cent on the first day of November following. The county treasurer sells lands for unpaid taxes on the first Tuesday in December in each year. Lands sold for taxes may be redeemed within three years or at any time before execution of the deed of conveyance, by paying the amount mentioned in the certificate of sale, and interest thereon at 2 per cent per month from the date of purchase, together with a penalty of 5 per cent and all other taxes paid subsequent to said sale, and interest thereon at the same rate. Taxes become a lien as between grantor and grantee on the first day of December in the year levied. No deed of land can be recorded without county auditor's certificate thereon that all taxes are paid.

Transfer of Corporate Stocks. (*See Corporations.*)

Wills. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal. An holographic will is one entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed. Every will, other than a nuncupative will, *must be in writing.* The words "writing" and "written" include "printing" and "printed," except in case of signatures, and where the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made. This applies to all instruments and papers. Every will, other than an holographic will and nuncupative will, must be executed and attested as follows: It must be subscribed at the end thereof by the testator himself, or some person in his presence, and by his direction must subscribe his name thereto; the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and there must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request and in his presence. A witness to a written will must write, with his name, the place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. A will of real or personal property, or both, or a revocation thereof, made out of this State by a person not having his domicile in this State, is as valid, when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this State and according to the provisions of the laws of this State. No provisions made for proof of wills made out of the State different from those made within. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. A will executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband. A foreign will may be admitteed to probate, upon the production of a copy of the same, and the probate thereof duly authenticated with a petition for letters, by the executor, or any other person interested in the will, to the county judge, and the same proceedings must be had for the settlement of the estate as in the probate of a domestic will.

SYNOPSIS OF THE LAWS OF OHIO

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. WHITE, JOHNSON, McCASLIN & CANNON, Counselors at Law, Cleveland. (*See Card in Attorneys' List.*)

Accounts. (*See Proof of Claims and Limitations.*)

Acknowledgments. A deed, mortgage, or lease for more than three years, of any estate or interest in real property, shall be signed by the grantor, mortgagor, or lessor, and such signing shall be acknowledged by the grantor, mortgagor, or lessor in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation, and such signing shall also be acknowledged by the grantor, mortgagor, or lessor before a judge of a court of record in this State, or a clerk thereof, a county auditor, county surveyor, notary public, mayor, or justice of the peace. No separate examination of wife required. When the officer has a seal, same must be affixed. A notary public is required to have a seal. The acknowledgment must be written or printed on the instrument to be acknowledged, and not on a separate piece of paper, pasted on or attached to it. When executed, acknowledged, and proved out of this State, in accordance with the laws of the place where executed, as valid as if executed in this State.

Actions. There is but one form of action, known as a civil action. An action must be prosecuted in the name of the real party in interest. If plaintiff or defendant other than an Ohio partnership, individual names must be given.

Administration of Decedent's Estates. The probate court has exclusive jurisdiction. Administration shall be granted by the probate court of the county where decedent was resident at the time of his death. If non-resident, in any county where there is an estate to be administered. If decedent dies intestate, administration granted, first, to husband or widow; second, next of kin, or if above renounce; third, to a creditor; or, fourth, such person as the court may deem competent. Executors and administrators required to give bond in amount double the value of personal estate. Executors may be excused from giving bond where will so directs. Inventory and appraisal of decedent's estate shall be filed in the probate court within three months after appointment. Administrator or executor must publish notice of his appointment for three consecutive weeks in some newspaper of general circulation. Claims against the estate of the deceased person must be filed with the administrator or executor for allowance, verified by the oath of claimant that the same is justly due, and that no off-sets exist against the same. (*See Proof of Claims.*) Claims should be filed within one year from the appointment of the administrator or executor. Appraisers should make allowance to widow and children under fifteen years for a year's support. Debts are paid in the following order: 1. Expenses of funeral, of last sickness, and of administration. 2. Allowance to widow and children for year's support. 3. Debts given a preference under the laws of the United States. 4. Taxes, etc. 5. Wages due manual laborers accruing within previous twelve months, not exceeding $150. 6. All other debts pro rata. Executors and administrators must file an account within eighteen months after appointment, and every twelve months thereafter.

Affidavits. (*See Oaths, etc.*)

Aliens. An alien can hold and possess real estate as fully as a citizen. No person shall be deprived of inheriting by reason of ancestors being aliens.

Appeals. Appeal will lie from a justice of the peace to court of common pleas of same county if judgment is greater in amount than $20, although case was tried to a jury in justice court. Will lie if amount under $20, and case not tried to a jury. The party desiring to appeal must within ten days after judgment give a bond to prosecute the appeal, and if judgment rendered against him, to pay the judgment and costs. A transcript of the proceedings before the justice must be filed with the clerk of the court of common pleas on or before the thirtieth day after rendition of the judgment. From the court of common pleas to the circuit court of the same county from a judgment or final order in a civil action, if the right to demand a jury in such action did not exist in the common pleas court; also from an interlocutory order dissolving an injunction. The party desiring to appeal must, within three days from the rendition of judgment or order, enter on the records a notice of his intention to appeal, and within thirty days give bond. Appeals also lie from probate court to court of common pleas in certain cases.

Arbitration. Any controversy, except concerning the possession or title to real estate, may be submitted to arbitration, and parties may enter into bonds to abide the award. Legal process may issue to compel attendance of witnesses. Oaths to witnesses may be administered by a judge or justice of the peace. The award shall be in writing and signed by arbitrators, or a majority of them. The award may be filed in the court named in the bond, or in the court of common pleas in the county where award is had, and court at the next term after the same is filed, if no exceptions taken, and the award is for the payment of money, may enter a judgment thereon. If the award is for the performance of something other than the payment of money, the party disobeying is liable to punishment as for a contempt. Award may be set aside for fraud, corruption, etc. Controversies before justices of the peace may be referred to arbitration, proceedings substantially as above. Upon petition court of common pleas may appoint arbitrators to settle trade disputes. The court of common pleas may appoint arbitrators to fix value of stock of dissenting stockholder in a railroad company, when property sold or leased to another company.

Arrest. *Arrest before Judgment.* The defendant in a civil action can be arrested before judgment, when there is filed with the clerk of the court an affidavit stating the nature of the plaintiff's claim; that it is just, and the amount thereof, and setting forth one or more of the following particulars: 1. That defendant with intent to defraud his creditors is removing, or about to remove, any of his property out of the jurisdiction of the court. 2. Converting his property into money, for the purpose of placing same beyond the reach of his creditors. 3. That he has property or rights in action which he fraudulently conceals. 4. Assigned, removed, etc., his property, with intent to defraud his creditors. 5. That he fraudulently contracted the debt. 6. That the money sought to be recovered was lost at gaming. Before order of arrest, bond must be given. After arrest, defendant may give bail. *Arrest after Judgment.* An execution against the person of the defendant for the payment of money may issue when affidavit sets forth any of the causes above enumerated by arrest before judgment. No bond required herein. Females and officers and soldiers of the revolutionary war exempt from arrest on claims arising on contract.

Assignments. An insolvent debtor may make an assignment in trust for the benefit of creditors, which takes effect from the time of filing in probate court. Assignee must, within ten days after delivery of assignment to him, produce the original assignment, or copy thereof, in the probate court, file same and enter into a bond in such sum and with such sureties as court shall approve. The court shall appoint three disinterested persons, who shall make an appraisal of the property and assets of the assignor. Assignee shall within thirty days make an inventory under oath of all the property of the assignor coming to his knowledge. Notice of appointment, for three successive weeks, in newspaper of general circulation, shall be given after bond entered into, and creditor shall within six months after publication of notice present claim with affidavit that said claim is just and lawful, the consideration thereof, and what, if any, set-offs or counter-claims exist thereto; what collateral or personal security, if any, the claimant holds for same, or that he has no security whatever. Any surety or person jointly liable with assignor is allowed to present and prove his claim on which he is bound. Suit must be brought on rejected claims within thirty days. Assignee shall, at the expiration of eight months, file a statement of his doings, in the probate court, and as often thereafter as the court may require. Assignment made in contemplation of insolvency, with intent to prefer one or more creditors, inures to the benefit of all creditors. Assignment made with intent to hinder, delay or defraud creditors, shall be declared void at the suit of any creditor, and such assignment, after having been declared void, or a preferred assignment, is cause for the appointment of trustee. No assignment shall be construed to include property exempt, unless the exemption is expressly waived. Preferred claims are: Taxes of every description assessed against assignor, and wages for all labor performed by any one in the assignor's service within twelve months preceding the assignment, not exceeding $300. The assignment in no way releases assignor from liability for the full amount of the claim due. An assignee may be removed for cause by probate court. In such case a trustee may be elected by a majority in value of creditors present attended by at least 50 per cent in value of creditors.

Attachment in a civil action for the recovery of money may be had when defendant is a foreign corporation, not authorized to do business in Ohio, or has absconded or concealed himself, or is about to remove, convert or assign, or has concealed his property with intent to defraud creditors, or where the debt was fraudulently or criminally contracted, that the claim is for work, or labor, or necessities, non-residence is ground of attachment. Plaintiff must give bond in double the amount at issue, except where defendant is a non-resident or a foreign corporation, when a bond is not required. An attachment against a non-resident or a foreign corporation shall not be granted, on a claim other than a demand arising out of contract, or for causing death, or personal injury by a negligent or wrongful act. Garnishee process may be had in aid of attachment against any debtor of the defendant. If the answer of the garnishee is not satisfactory, the plaintiff may proceed against him in a civil action. A citizen of this State may be enjoined from prosecuting an attachment in another State against a citizen of this State, to subject to the payment of his claim the earnings of the debtor, which by the laws of this State are exempt from being applied to the payment of such claim. *Attachment before debt due.* A creditor may bring an action on his claim before it is due and have an attachment against the property of his debtor: 1. When a debtor has sold, conveyed, or otherwise disposed of his property with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts. 2. Is about to make such sale, conveyance or disposition of his property with such fraudulent intent. 3. Is about to remove his property, or a material part thereof, with the intent to cheat and defraud his creditors, or to hinder and delay them in the collection of their debts. The plaintiff must give bond as in other cases of attachment, and must by himself, his agent or attorney, before the action is brought or attachment issued, make an oath in writing, showing the nature and amount of his claim; that it is just, when it will become due, and the existence of any of the grounds above mentioned.

Attorneys, Power of. (*See Powers of Attorney.*)

Banks. The question of State banking is of very little importance in this State, although it occupies fifty-two pages of the Revised Statutes, sections 7476-7650. There are provisions for a "State bank" and branches, "independent banking companies" and "free banking." The Revised Statutes, sections 3817-18, provide: "Every banking institution or corporation engaged in the business of banking, organized under the laws of this State, shall make a report to the auditor of the State, showing the condition at the opening of business on the first Monday of April and October of each year." The report must be verified by oath or affirmation of the officers, and published in a newspaper. There is no examiner for the State banks. Article XIII, section 7, of the constitution, says: "No act of the general assembly authorizing associations with banking powers shall take effect until it shall be submitted to the people at the general election next succeeding the passage thereof, and be approved by a majority of all the electors voting at such election." This has been held to apply only to banks of issue. Savings and loan associations may invest their funds in the purchase of stocks, bonds, or other evidences of the indebtedness of the United States, stocks and bonds of the State of Ohio, bonds of any municipal corporation of this State, or school bonds of any municipal corporation, special school district, or body politic in this State, issued pursuant to law, to such an amount as may be deemed proper; or in bonds issued by county commissioners within this State in pursuance of law; or the stocks or bonds of any State of the United States that has for five years, immediately preceding such investment, paid the interest on its bonded debt in lawful money of the United States; but no such association shall at any time have an investment of a greater amount than one-tenth of its paid-in capital in either of the last two named securities; or in bonds or notes secured by mortgages on unincumbered real estate situate in the county where the association is located, or in an adjoining county in this State, worth, exclusive of buildings, at least double the amount loaned thereon. There is no bank of issue in Ohio.

Bills and Notes. (*See Notes and Bills.*)

Bills of Lading. Bills of lading are negotiable, and if made to "bearer," the transfer by delivery conveys title. Executing or delivering, indorsing or assigning, a false or fictitious bill of lading, with intent to defraud, or attempting so to do, is punishable by imprisonment in penitentiary not more than four nor less than one year.

Chattel Mortgages. A chattel mortgage or conveyance of personal property not accompanied by immediate possession is not good as against creditors, unless the mortgage, or a copy thereof, be filed with the township clerk where the mortgagor resides, or if mortgagor is a non-resident, then with the clerk of the township where the property is situated. Oath of the mortgagee, his agent or attorney, must be attached, showing the amount due thereon. If amount not paid, mortgage must be refiled within thirty days before the expiration of a year from the original filing, and a new affidavit showing the amount then due. It is a criminal offense to sell, secrete, or remove mortgaged property, chattel mortgages on necessary household goods, wearing apparel or mechanics' tools, except to secure purchase price, must be foreclosed in a court of record.

Conditional Sales. Where personal property is sold to any one to be paid for in installments, or is hired, rented, or delivered to any person upon condition that title shall pass on payment in full, but until payment title to remain in vendor, such condition shall be void as to creditors, etc., unless executed, verified, and filed, as required for chattel mortgages. The vendor can not retake possession of the property without tendering or paying at least 50 per cent of the sums so paid on said property, less any damage or breakage, and taking without such payment or tender is a misdemeanor.

Consignments. A carrier, warehouse man, factor, storage, forwarding or commission merchant, or his clerk, agent, or employe, who, with intent to defraud, in any way disposes of or converts to his own use any bill of lading, custom-house permit, or warehouse keeper's receipt entrusted to or possessed by him, or any property entrusted or consigned to him, or the proceeds of the sale of such property, or the profits, product, or result thereof, shall be imprisoned in the penitentiary.

Conveyances. (*See Deeds.*)

Corporations, *Domestic.* Domestic corporations formed under general laws and for any purpose except professional business. Articles of incorporation are filed with the secretary of State, and in general must state: 1. Name of the corporation. 2. The place where it is to be located, or its principal business is to be transacted. 3. The purpose for which it is to be formed. 4. Amount of the capital stock, if any, and the number of shares. Articles must be signed by five persons, a majority of whom must be citizens of the State; must be acknowledged before an officer whose official character must be certified to by the clerk of the court of common pleas. Above corporations are divided in those for profit and not for profit. Each corporation for profit must have not less than five, nor more than fifteen directors. A majority of directors must be citizens of the State, and each director must be a holder of stock. Stock in a corporation is deemed personal property. Stockholders in a corporation are liable in addition to their stock in an amount equal to the stock by them subscribed, or otherwise held, to secure creditors. A suit against the stockholders to subject their liability to creditors may be brought by one creditor for the benefit of all. The capital stock of a corporation may be increased by a vote of the majority of the stock, after thirty days' notice in writing, or by assent in writing of three-fourths of the stock in both number of shares and amount. Fee for incorporation is one-tenth of 1 per cent on the capital stock. Trustees of a corporation not for profit are personally liable for debts of the corporation by them created. There are special provisions for incorporating union depot companies, insurance and mutual benefit companies, agricultural societies, humane societies, savings and loan associations, and corporations for dealing in real estate.

Foreign Corporations. No foreign corporation, except a banking or insurance company, shall do business in this State without obtaining a certificate from the secretary of State that it has complied with the laws of this State regulating such. In order to obtain such certificate, each foreign corporation must file a sworn copy of its charter, together with a statement of the amount of capital stock, the business or objects of the corporation, and fix a place in the State of Ohio where it is to have its principal place of business, and designating a person in this State upon whom process can be served, such designation to continue until revoked in writing. Fees paid secretary of State for such certificate vary from $15 to $50, according to amount of capital stock. Failure to obtain such certificate forfeits the right to sue upon any contract in this State. Corporations incorporated under the laws of another State, and having principal place of business in Ohio, shall file a statement with secretary of State showing the amount of its capital stock, and as a tax, shall pay annually a

sum equal to one tenth of 1 per cent upon its authorized capital. Non-compliance forfeits all rights to maintain actions on contract in this State. Upon compliance such corporations are not subject to process of attachment on the ground of non-residence

Courts. *Supreme Court.*—Court of last resort. A court of error. Has original jurisdiction in habeas corpus, mandamus, and quo warranto. *Circuit Court.*—State divided into eight circuits. Like original jurisdiction as supreme court, and appellate jurisdiction and jurisdiction in error from the common pleas court. *Common Pleas Court.*—Original jurisdiction in all civil cases where amount in dispute is more than $100, and actions involving title to real estate. Appellate jurisdiction from inferior courts and county commissioners in proper county. *Probate Courts.*—Original jurisdiction in control of estates of insolvents, deceased persons, minors, lunatics, imbeciles, and habitual drunkards; probating wills and settlement of estates; original jurisdiction in all matters of guardianship inquest of lunacy; concurrent jurisdiction with common pleas court in appropriation proceedings. *Justices of the Peace.*—Exclusive original jurisdiction in amounts less than $100; concurrent jurisdiction with common pleas court in amount from $100 to $200, except in cases involving title to real estate.

Curtesy. (*See Dower.*)

Days of Grace. (*See Bills and Notes.*)

Deeds, Mortgages, etc. All deeds or instruments conveying an interest in real property shall be signed by the grantor in the presence of two witnesses, and such signing shall be acknowledged before a judge of the court of record of this State, or a clerk thereof, a county auditor, county surveyor, notary public, mayor, or justice of the peace, who shall certify the acknowledgment on the same sheet of paper, subscribe his name thereto, and affix his official seal if he have one. No separate examination of the wife is required. Deeds and instruments conveying an interest in real estate must be recorded in the office of the recorder of the county where the land is located, and until so recorded or filed for record, are deemed fraudulent, as to bona fide purchasers without notice. Mortgages on real estate take effect from time of delivery for record. Mortgage first presented must be first recorded. Private seals have been abolished in this State.

Depositions. Depositions can only be used in the following cases. 1. When the witness is absent from, or is a non-resident of the county. 2. When witness is deceased, or unable to attend the trial. 3. Testimony upon a motion, where oral examination is not required. As soon as service is had in a case, either party may begin taking depositions. Written notice of the intention to take depositions must be given the opposite party, specifying the court, parties, time and place of taking, and if the testimony of a party is to be taken, the notice must so specify. Sufficient time must be given the adverse party to reach the place of taking by the usual routes, and also one day for preparation, exclusive of the day of service. The taking of depositions must be continued from one business day to the next. The deposition should be written in the presence of the officer taking the same, and when completed, must be read over by the witness, and by him subscribed, and the officer should then conclude the deposition by the following certificate:

State of..... } ss.
.....County. }

....., a ..... in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above named . . . was by me first severally sworn ..... to testify the truth, the whole truth, and nothing but the truth, and that the deposition by ..... subscribed as above set forth, w .. reduced to writing by ....., and w .. subscribed by the said witness ..... respectively in my presence, and w .. continued from day to day, as above set forth, that said deposition w .. taken at the time and place specified in the notice hereto attached, and that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this ..... day of ....., A. D. 19..

[SEAL.] (Signature and official title.)

Depositions out of the State may be taken before a judge, justice, or chancellor of any court of record, justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, a commissioner appointed by the governor of the State, or any person authorized by special commission.

Descent and Distribution. Any real estate which came to decedent by descent or devise or deed of gift from any ancestor descends as follows: 1. To the children or legal representatives. 2. If no such children or legal representatives, then to husband and wife for life. 3. If no husband or wife, to the brothers and sisters of the blood of the ancestor from whom the estate came. 4. If no such brothers and sisters, then to the ancestor, if living, from whom the estate came. 5. If ancestor be deceased, then to his children; if no children, then to the relict of such ancestor; if none such, then to the brothers and sisters of such ancestor; if none such, then to the brothers and sisters of the half-blood of intestate. 6. If no half-brothers of intestate, then to the next of kin of the intestate of the blood of the ancestor. When the relict of a deceased husband or wife shall die intestate, and without issue, possessed of any real estate or personal property which came by purchase or from any former deceased husband or wife by deed or gift, devise, or by bequest, then such estate shall pass to and vest in the children of said deceased husband or wife, or their legal representatives. If there are no children, then such estate shall pass one-half to the brothers and sisters of such intestate, and one-half to the brothers and sisters of such deceased husband or wife from which such estate came. If the estate came not by descent, devise, or deed of gift, it descends as follows: 1. To children. 2. If no children, to husband or wife. 3. If no husband or wife, then to brothers and sisters of the whole blood. 4. If none such, then to brothers and sisters of the half-blood. 5. If none such, then to the father, if living; if not, then to the mother. 6. If these be dead, then to the next of kin. The personal property of a deceased intestate shall be distributed as under the last paragraph, except such right as the widow or widower may have.

Divorce. Divorces may be granted for the following causes: 1. Husband or wife living at the time of marriage. 2. Willful absence for a period of three years. 3. Adultery. 4. Impotency. 5. Extreme cruelty. 6. Fraudulent contract. 7. Any gross neglect of duty. 8. Habitual drunkenness for three years. 9. Imprisonment in the penitentiary. 10. The procurement of a divorce in another jurisdiction by one party, but leaving the marriage contract binding upon the party resident in this State. Plaintiff must have been a resident of the State for one year, and a bona fide resident of the county where the action is brought.

Dower. A widow or widower who has not relinquished or been barred of the same, shall be endowed of an estate for life in one-third of all the real property of which the deceased consort was seized as an estate of inheritance at any time during the marriage, and in one-third of all the real property of which the deceased consort, at decease, held the fee simple in reversion or remainder; and also in one-third of all the title or interest that the deceased consort had, at decease, in any real property held by article, bond, or other evidence of claim; and the widow or widower may remain in the mansion house of the deceased consort, free of charge, for one year, if dower is not sooner assigned; but dower shall not be assigned to any widow or widower in any real property of which the deceased consort, at decease, held the fee simple in reversion or remainder, until the termination of the prior estate.

Executions issue from the court of common pleas to any county. Execution against the person will only issue when the judge of one of the superior courts is satisfied of the existence of cause—such as concealment of property by the debtor—or where debtor was arrested before judgment and not discharged under the law. Lands levied on must be appraised by three disinterested free-holders, and can not be sold for less than two-thirds of such appraisement. Executions are stayed before justices, by entering into a bond to adverse party within ten days after rendition of judgment, on judgments for $5 and under, sixty days; $5 and under $20, ninety days; $20 and under $50, 150 days; $50 and upward, 210 days. No stay on judgment in favor of any person for wages due for manual labor performed.

Exemptions. Every person who has a family, and every widow, may hold the following property exempt from execution, attachment, or sale for any debt, damages, fine or amercement: The wearing apparel for person or family, beds and necessary furniture, one cow or the value thereof in furniture, two swine, six sheep, certain religious books, family provision actually provided, sewing machine, the tools and implements of value of $100, personal earnings of debtor for the period of three months, to draymen and agriculturists certain specified exemptions, physician's books, instruments and medicines not to exceed $100. Every unmarried woman may hold the following property exempt from execution, attachment, or sale: 1. Wearing apparel not exceeding $100. 2. One sewing machine. 3. One knitting machine. 4. A bible, hymn book, psalm book, and any other books not exceeding in value $25. Any beneficiary fund, not exceeding $5,000, set apart, appropriated, or paid by any benevolent association or society according to its rules and regulations to the family of any deceased member, or to any member of such family, shall not be liable to be taken by any process or proceedings, legal or equitable, to pay any debt of such deceased member. The regalia, insignia of office, journals of proceedings, account books, and the private work belonging to any benevolent society in this State, shall be exempt, etc. All property used by any municipal corporation or fire company for the purpose of extinguishing fire shall be exempt, but the owner may create liens thereon by mortgage, etc. Husband and wife living together, or a widower living with an unmarried daughter or minor son, and every unmarried female having in good faith the care, maintenance, and custody of any minor child or children of a deceased relative, residents of Ohio, and not the owner of a homestead, may, in lieu thereof hold exempt from levy and sale real or personal property to be selected by such person, his agent or attorney, at any time before sale, not exceeding five hundred dollars ($500) in value, in addition to the amount of chattel property otherwise by law exempted. Ten per cent of personal earnings for three months subject to be taken on execution for necessaries.

Garnishment. (*See Attachment.*)

Holidays. Every Sunday and the first Monday in September are holidays for all purposes. For holidays as to presenting, etc., of commercial paper, see notes and bills.

Homestead. Husband and wife living together, a widow or a widower living with an unmarried daughter or unmarried minor son, may hold exempt from sale on judgment or order a family homestead not exceeding $1,000 in value; the wife may make demand if the husband refuse, but neither can make such demand if the other has a homestead. Where the homestead is sold for the payment of liens thereon, after payment of such liens, the owner may claim $500 out of the balance of the proceeds of sale, if any, in lieu of a homestead.

Insolvent Debtors. (*See Assignments.*)

Interest. The legal rate is 6 per cent. Parties may contract in writing for 8 per cent. No penalty is attached for the violation of the law. If a contract is made for a higher rate than 8 per cent, the contract as to interest is void, and the recovery is limited to the principal sum and 6 per cent. Interest is computed upon judgments and decrees at the rate specified in the instrument upon which said judgment or decree is rendered. Interest is not recoverable on open running accounts, when there are no circumstances from which an agreement to allow interest can be inferred, and there has been no vexatious delay of payment. Open accounts draw interest after statement is made and account rendered. Interest from and after maturity may be allowed on items of wages or salary, payable monthly.

Judgments are a lien on real property of defendant within the county, which lien continues for five years. If execution be not levied within one year from the rendition of the judgment, said judgment shall not operate to the prejudice of any other bona fide judgment creditor. Unless execution is issued within five years, the judgment becomes dormant and ceases to operate as a lien. A dormant judgment may be revived on motion, or by action within twenty-one years.

Liens. Any person performing labor or furnishing material for constructing, altering, or repairing any structure, or for boring, etc., any oil, gas, or other well by virtue of a contract with or at the instance of the owner thereof, or his agent, trustee, contractor, or sub-contractor, shall have a lien upon the structure, etc., and upon the land whereon the same is located upon filing a verified account of the amount and value of such work done or material furnished, together with a copy of the contract, if in writing, and a description of the land on which the structure etc., is located. Said account so verified, must be filed with the recorder of the county within four months from performing such labor or furnishing such material. Said lien shall remain six years from and after the filing thereof, but if an action is brought within that time to enforce the lien, the same shall continue in force until final adjudication. Liens are also given to persons who furnish material for the construction of roads, side-walks, ditches, drains, etc. Sub-contractors, laborers, and material-men may obtain a lien for work done, and their liens are prior to the lien of the principal contractor, but have no priority among themselves. In case of dispute as to amount of claim or lien, the same may be submitted to arbitration. Total amount of lien shall not exceed the value agreed upon between head contractor and owner, except in case of fraud.

Limitations. Within twenty-one years: An action for the recovery of the title or possession of real estate or on a judgment. Within fifteen years: An action upon an agreement or promise in writing. Within ten years: An action upon an official bond or undertaking of an assignee, trustee, or administrator. Within six years: An action upon a contract not in writing either express or implied. Within four years: Actions for tres

pass, recovery of personal property and relief on the ground of fraud: Within one year: Actions for libel, slander, malicious prosecution; actions upon a statute for penalty or forfeiture. An action may be taken out of the statute by part payment or an acknowledgment or promise in writing.

Married Women. A married woman shall sue and be sued as if she were unmarried, and her husband shall be joined with her only when the cause of action is in favor of or against both her and her husband. When a married woman sues or is sued, like proceedings shall be had and judgment rendered and enforced as though she were unmarried, and her property and estate shall be liable for any judgment against her, but she shall be entitled to the benefit of all exemptions to heads of families. Any estate or interest, legal or equitable, in real or personal property, including rights in action, belonging to a woman at her marriage, or which may come to her during coverture, by conveyance, gift, devise, or inheritance, or by purchase with her separate money or means, or due as the wages of her personal labor, or growing out of any violation of her personal rights, shall, together with the rents, incomes, issues, and profits thereof, be and remain her separate property. The separate property of the wife shall be under her sole control, and shall not be taken by any process of law for the debts of the husband or be in any manner conveyed or incumbered by him, and she may, in her own name, during coverture, contract to the same extent and in the same manner as if she were unmarried, and she may convey the same without her husband joining with her in the deed; but if the husband does not join, he is not barred of his dower. Neither husband nor wife, as such, is answerable for the acts of the other.

Minors. The age of majority for males is twenty-one years; females eighteen years.

Mortgages must be executed as deeds, and the first mortgage recorded has the preference. Are foreclosed by suit in the court of common pleas, and there is no redemption of lands sold under foreclosure after confirmation of sale by the court. *(See Chattel Mortgages.)*

Notes and Bills of Exchange. All bonds, notes, bills, and checks payable at a day or after sight, are due and payable on the day mentioned without days of grace. If due upon first day of week, or on a legal holiday, the day of payment shall be the next succeeding business day. The 1st day of January, the 4th day of July, the 25th day of December, the 22d day of February, the 30th day of May, first Monday of September of each year, and fast or thanksgiving days or any day which may hereafter be made a legal holiday, shall as to payment presentment or protest be considered as the first day of the week. When holidays fall on Sunday the following Monday shall be considered as the first day of the week.

Oaths. An oath required by law may be taken before the following officers: Within State—A judge or clerk of supreme court or court of common pleas a probate judge, justice of the peace, notary public, mayor. Without the State—By any officer authorized by law to take a deposition in such State.

Partnerships. Limited partnerships for the transaction of mercantile, mechanical, manufacturing, or mining business within this State, may be formed by two or more persons in accordance with statute, in which one or more partners are generally liable, and the special partner or partners are liable only for the amount of capital contributed. A certificate shall be signed and acknowledged by the parties, stating: 1. Name under which business is to be carried on. 2. Names and places of residence of each partner. 3. The amount contributed by the special partner. 4. The general nature of the business to be transacted. 5. When the business to commence, and when to terminate. The certificate to be recorded in the office of the recorder of the county, and publication of the same to be made for the period of six weeks. The style is the names of the general partners, followed by "& Co." Limited partnership associations may be formed, in accordance with the statute, by any number of persons, not less than three nor more than twenty-five for conducting any lawful business, except banking and dealing in real estate, by subscribing and contributing capital thereto. Any member thereof shall be liable only to the extent of his capital stock therein for the debts of such association. The name of such association shall end with the word "limited." Ohio partnerships doing business under a name which does not include the names of all who are members of the same, must file a certificate with the clerk of the court of common pleas setting forth who the members of the partnership are, and failing so to do are prohibited from bringing actions on contracts.

Powers of Attorney. A power of attorney for the conveyance, mortgage, or lease of any estate or interest in real property, shall be signed, attested, acknowledged, and certified in the same manner as deeds, mortgages, and leases.

Practice. Practice is regulated by the Code of Civil Procedure.

Proof of Claims. All claims against an assignee or administrator must be verified by oath of the claimant, his agent or attorney that the same is just and lawful, and that the said amount is now due and unpaid; that there are no set-offs or counter claims and what, if any, security the claimant holds. A default judgment may be taken before a justice of the peace on an account thus verified.

Replevin. An order for the delivery of specific personal property shall be issued upon the filing of an affidavit of plaintiff, his agent or attorney, showing: 1. A description of the property claimed. 2. That the plaintiff is the owner of the property, or has an interest therein, stating the facts. 3. That the property is wrongfully detained by the defendant. 4. That it was not taken on process issued against the plaintiff, or if so taken, that it is exempt from execution. An order for the delivery shall thereupon issue, commanding the officer to take possession of the property. The sheriff shall then take the property, and cause the same to be appraised. The sheriff shall deliver the property so taken to plaintiff after the expiration of five days, upon plaintiff's executing an undertaking to the defendant in double the value of the property taken; that plaintiff will duly prosecute the action and return the property, or pay the value so appraised; provided, however, that the defendant may at any time within five days execute an undertaking to the plaintiff that he shall return the property, or pay the value so appraised, together with costs, etc., whereupon the property shall be returned to the defendant by the officer. If the property replevined consists of heir-looms, personal keepsakes, or other articles of like nature, the sheriff shall retain and safely keep the same, subject to the order of the court, if the defendant within ten days serve written notice that he will demand the return of the same upon final hearing of the case. The action of replevin may be maintained before a justice of the peace under proceedings, as above stated, when the appraised value of the property is $300 or less. If the appraised value of the property exceed $300, he shall then certify his proceedings to the court of common pleas.

Stay of Execution. No stay of execution is allowed, except on judgments rendered by justices of the peace, and where cases are taken from a lower to a higher court. The stay in a justice's court is as follows: On any judgment for $5 and under sixty days; exceeding $5 and under $20, ninety days; $20 and under $50, one hundred and fifty days; any judgment for $50 and upwards, two hundred and forty days.

Supplementary Proceedings. Such proceedings in this State are known by the name of proceedings in aid of execution, wherein a debtor, as well as persons supposed to be indebted to him, may be summoned before a referee, and an examination had as to his property and rights in action, which if found may be subjected to the plaintiff's claim.

Taxes. Taxes on real estate become a lien on the day preceding the second Monday in April. Taxes are due on December 20th, of each year, but the party charged, may, at his option pay one-half on that date and the remainder on or before June 20th, next. If any delinquent tax of the previous year, and half of the current year's tax is not paid on or before December 20th, the property is advertised by the county treasurer and sold to the person who will pay all the taxes and penalty then due. The owner can redeem within two years after such sale by paying the amount for which the property was sold, all subsequent taxes, with interest and a penalty of 15 per cent, if redeemed within one year, or a penalty of 25 per cent if not redeemed until the second year. Lands offered for sale and not sold is forfeited to the State, and is offered each two years until sold. If all the taxes and penalties are paid before the sale, the State relinquishes its claim. If sold, the owner may redeem at any time within six months after sale, by paying the amount of sale and costs, together with 50 per cent penalty thereon. There is a direct and collateral succession tax.

Time. Central standard time is legal time throughout Ohio.

Wills. Every last will and testament (except nuncupative wills) shall be in writing, and signed at the end thereof by the party making the same, or by some other person in his presence and by his express direction, and shall be attested and subscribed in the presence of such party by two or more competent witnesses who saw the testator subscribe, or heard him acknowledge the same. No legatee or devisee under the will should be a witness. Verbal wills made in the last sickness will be valid in respect to personal estate if reduced to writing and subscribed by two competent disinterested witnesses within ten days after the speaking of the testamentary words, and offered for probate within six months after the death of the testator. Contests of wills must be begun within two years after probate, except by persons under disability. Every will when admitted to probate must be filed in the office of the probate judge. Wills executed, proved, and allowed out of the State may be admitted to record in this State under proper proceedings in the probate court.

SYNOPSIS OF THE LAWS OF OKLAHOMA TERRITORY

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. COTTERAL & HORNOR, Attorneys at Law, Guthrie. *(See Card in Attorneys' List.)*

Abstracts may be made only by persons who have given bond in sum of $5,000. Provisions for requirement of additional security from abstracters for punishment of violations of the statute, and for maximum charges.

Accounts. In all civil actions, allegations of the correctness of any account, duly verified by the affidavit of the party, his agent or attorney, shall be taken as true, unless the denial of the same be verified by the affidavit of the party, his agent or attorney.

Acknowledgments. Within the Territory instruments may be acknowledged before a judge or clerk of the supreme court or of the district courts, or deputy of such clerk, a county or probate judge, county clerk, or deputy, notary public, justice of the peace, mayor of a city, register of deeds, United States circuit or district court commissioner. Outside of the Territory, and within the United States, before a justice, judge, or clerk of any court of record of the United States or any State or Territory, a notary public, any other officer of the State or Territory where acknowledged, in conformity to its laws upon the subject, a commissioner of deeds, etc., appointed by the governor of this Territory. Without the United States, before a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where acknowledged, a consul, vice-consul, or consular agent of the United States, resident in the country where acknowledged, a judge of a court of record where acknowledged, or a notary public of such country, or the mayor, or other chief officers of any city or town having a seal.

Actions. The distinction between actions at law and suits in equity is abolished. There is but one form of action, to-wit, a civil action.

Administration of Estates. Probate judge has exclusive jurisdiction. *(See Wills.)* Notice to creditors to present claims must be published at least four weeks, and time expires at end of six months from first publication. If disallowed by either judge or administrator, suit must be brought in three months, or claim is barred. Property may be sold to pay debts; and if sale is best for estate, at public or private sale, subject to showing made, provisions of law, and discretion of judge. The debts of the estate must be paid in the following order: 1. Funeral expenses. 2. Expenses of last sickness. 3. Funds necessary for support of family for ninety days. 4. All taxes. 5. Debts preferred under the law. 6. Judgments rendered against decedent in lifetime, which are liens, and mortgages in order of their dates. 7. Demands or claims presented to administrator for allowance, or proved within six months after notice of his appointment. 8. All other demands. Suits may be maintained and defended by foreign administrators.

Affidavits may be used to verify a pleading, to prove the service of a summons, notice, or other process, in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion, or in any other case permitted by law. May be made in or out of the Territory, before any person authorized to take depositions, and must be authenticated in same, except as provided for verification of pleadings.

Aliens. Governed by the laws of the United States. *(See Descent and Distribution.)*

Appeals. They lie from justices court to district court, by giving appeal bond. From the district court to the supreme court appeal may be taken by the making, serving, signing, and settling a case made within

three days, or within time, to be granted by the court; also by transcript of the proceedings containing judgment. Appellant must file petition in error, with case made or transcript within one year. Summons in error issues to appellee.

Arbitration. Parties to a question, which might become the subject of an action, may agree upon a case, containing the facts, and present the same to any court, which would have jurisdiction if an action had been brought. An affidavit must be filed, showing controversy to be real, and proceedings in good faith. The court shall thereupon render judgment, as if an action were brought. Same is subject to reversal as if in an action, unless otherwise stipulated.

Assignments may be made by insolvent debtor, but without preference, for the benefit of all creditors. If, upon trust or condition that gives any creditor preference or priority, it shall not be valid, but in such cases property of insolvent shall become a trust fund and inure to the benefit of all creditors, in proportion to their claims. Must be in writing, subscribed by the assignor, or his agent, authorized in writing; must be acknowledged, and together with verified inventory of assets, liabilities creditors, and property exempt or not exempt, must be recorded in the office of the register of deeds within twenty days. Within thirty days after date of assignment, assignee must give bonds in double the value of property assigned, to be approved by the district judge, conditioned for faithful discharge of trust, etc. After the lapse of six months, on motion of any creditor, assignee shall report and render account of his proceedings within fifteen days, at discretion of the judge, to whose order all proceedings are subject. Insurance and property exempt do not pass in assignment unless specially mentioned. An assignment may not afterwards be canceled or modified without the consent of every creditor affected thereby.

Attachments. The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated: 1. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this Territory (but no order of attachment shall be issued on the ground or grounds in this clause stated, for any claim other than a debt or demand arising upon contract, judgment or decree, unless the cause of action arose wholly within the limits of this territory, which fact must be established on the trial). 2. When the defendant, or one of several defendants, has absconded with intention to defraud his creditors. 3. Or has left the county of his residence to avoid the service of summons. 4. Or so conceals himself that a summons can not be served upon him. 5. Or is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors. 6. Or is about to convert his property or a part thereof into money, for the purpose of placing it beyond the reach of his creditors. 7. Or has property or rights in action, which he conceals. 8. Or has assigned, removed or disposed of, or is about to dispose of, his property or a part thereof, with the intent to defraud, hinder or delay his creditors. 9. Or fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which suit is about to be or has been brought. 10. Or where the damages for which action is brought are for injuries arising from the commission of some felony or misdemeanor, or the seduction of any female. 11. Or when the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery. An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing: 1. The nature of the plaintiff's claim. 2. That it is just. 3. The amount which the affiant believes the plaintiff ought to recover. 4. The existence of some one of the grounds for an attachment enumerated in the preceding section. Where a debtor has sold, conveyed or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts, or is about to make such sale or conveyance or disposition of his property, with such fraudulent intent, or is about to remove his property, or a material part thereof, with the intent or to the effect of cheating or defrauding his creditors, or of hindering or delaying them in the collection of their debts, a creditor may bring an action on his claim before it is due, and have an attachment against the property of the debtor. Before order issues, the plaintiff must file bond not exceeding double the amount of his claim; but no bond is required in case defendant is a non resident or foreign corporation. In cases where debt is fraudulently contracted, it is deemed due at the time of the contract.

Banks may be organized by three or more persons, a majority of whom must reside in the Territory. Building and furniture must not exceed one-third of the capital in value. Capital stock must be fully paid in, and must not be less than $5,000 in cities having less than 2,500 inhabitants; or less than $10,000 in cities having more than 2,500 and less than 5,000 inhabitants; or less than $15,000 in cities having more than 5,000 and less than 10,000 inhabitants; or less than $25,000 in cities having over 10,000 inhabitants. Full amount of capital stock must be subscribed before charter is filed. Capital stock must be divided in shares of not less than $100, and all subscriptions must be paid in cash. Capital stock can not be increased until original capital is fully paid in. Bank may be dissolved by proceeding in district court. Board of directors shall be not less than three, nor more than thirteen in number. Officers of bank elected by board of directors. All officers required to give good and sufficient bond, to be approved by board. Board must meet twice each year to examine books, securities, etc., and must forward certified copy of report to bank commissioner within ten days. Shareholders additionally liable for amount of stock owned, and no more. Banks must have on hand available funds as follows: In towns of less than 2,500 population, 20 per cent of entire deposits; in towns having over 2,500 population, 25 per cent of entire deposits; two-thirds of which may consist of balances due from other banks at such points as bank commissioner shall approve, and one-third shall consist of cash. Banks which are depositories for reserves of other banks must have on hand 25 per cent of deposits, and bank must not make loans when funds are below required amount. When reserve of any bank is below required amount, bank commissioner shall notify such bank to make good reserve, and if bank fail to do so within thirty days after such notice, it shall be deemed insolvent, and bank commissioner shall take possession of same. Savings banks not transacting a general banking business must keep on hand 10 per cent of deposits in cash, and also keep like sum invested in government or municipal bonds worth not less than par. Total liability to any bank for money borrowed must not exceed 20 per cent of capital stock and surplus, but discount of bills drawn in good faith against actual existing receipts as collateral security and discount of commercial paper actually owned by the person shall not be considered as money borrowed. Making of false report a felony. Receiving deposits when insolvent a felony. Transacting banking business without complying with law a misdemeanor. Banks must report to bank commissioner four times a year, and oftener if called upon. Reports published twice in newspaper. Dividends and amount carried to surplus, and undivided profits accounts must be reported to commissioner. Each bank must report within ten days after first of January in each year amount of receipts and disbursements for preceding year. Penalty for failure to make reports $50 per day. Failure to comply with requirements of law for a period of ninety days after demand is made forfeits franchise, and commissioner must revoke authority by publication in official county paper, and attorney-general must commence action to dissolve corporation. Bank commissioner appointed by governor for term of two years, and must not be interested as stockholder of any bank. Must also have had three years actual experience as banker. Must give bond in sum of $25,000. Commissioner must visit each bank at least once a year. Fee for examination, $15 to $35, depending on capital stock. Fees covered in the territorial treasury. Commissioner must take charge of insolvent banks, and have a receiver appointed to wind same up. Bank may place its affairs in hands of receiver by posting on front door notice to that effect. Bank can not be attached when in hands of commissioner, except where deposits were received when in a failing condition. Bank may liquidate by paying depositors, and filing verified statement with commissioner, showing that all liabilities have been paid. Bank deemed insolvent when cash value of assets insufficient to pay liabilities when unable to meet demand of creditors in usual manner, or when it fails to make good reserve as required by law. In declaring dividends one-tenth of net profit account to be carried to surplus fund until same shall amount to 50 per cent of capital stock. Capital must not be diminished. Failure to comply with provisions of act a crime. Any person, firm, or corporation receiving deposits deemed a bank, and amenable to provisions of law. Falsely certifying a check or draft a felony. Officers liable on official bonds for overdrafts. Capital stock may be reduced by three-fourths vote of stockholders. If capital impaired, commissioner must require stockholders to make same good. National bank may be incorporated as State bank. Bank must keep correct list of names, and residence of stockholders, and same open to inspection of creditors, shareholders, and tax officials. Same must be filed with commissioner on first Monday in January in each year. Commissioner may revoke authority of any bank refusing investigation. Can not hold real estate except for place of business, or when taken in satisfaction of debt, in which case must not be held for more than five years. Shares of stock deemed personal property, but can not be transferred on books while registered holder indebted to bank. Can not loan to stockholders on stock, but may receive same as additional security for prior debt. Making false report deemed perjury.

Bills of Lading. Title which first holder had when he received bill of lading passes to every subsequent indorsee thereof in good faith and for value, the same as a bill of exchange. When made to bearer, delivery transfers title. Bill of lading does not alter rights or obligations of carrier unless plainly inconsistent therewith. Carrier is exonerated from liability by delivery, in good faith, of freight, to any holder of a bill of lading therefor, properly endorsed or made in favor of the bearer. Carrier may demand surrender of bill of lading given, or reasonable indemnity, before delivering freight.

Chattel Mortgages and Deeds of Trust. (*See Mortgages.*) Deeds of trust must be foreclosed by action in court. Every disposition of real property, whether by transfer or will, must be made directly to person, in whom the right to the possession and profits is intended to be vested.

Conditional Sales. Contracts constituting conditional sales must be filed with register of deeds to be valid against creditors and purchasers for value without notice.

Contracts may be made by all persons except minors, persons of unsound mind, and persons deprived of civil rights. There is no distinction between sealed and unsealed instruments. Minors are males under twenty-one, and females under eighteen years of age. Any benefit conferred, or agreed to be conferred upon the promissor by any other person, to which the promissor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promissor, is a good consideration for a promise. Provisions of the statute of frauds are in force. (*See Holidays, Judgments.*)

Corporations may be public or private, and formed by filing articles of incorporation with the secretary of the Territory, and compliance with statute. The incorporation or corporate rights shall not be inquired into collaterally, but such inquiry may be had and action brought at the suit of the Territory. Each stockholder is individually liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him at the time action is commenced against him. The term stockholder applies as well to every equitable owner, and to every person who has advanced the installment or purchase money in the name of a minor. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder a stockholder within the meaning of these provisions, except as mentioned. Capital stock may be increased by compliance with law, but excess of stock over charter limit is invalid. Corporations may be dissolved: 1. By expiration of a time named in the articles of incorporation; 2. Involuntarily, by judgment on account of neglect, abuse, or surrender. 3. Voluntarily, by the district court, upon application, setting forth compliance with statutory requirements, which may be resisted by any person and trial had. Provisions allowing railroad, wagon-road, banking, eleemosynary and insurance corporations and building associations. No corporation of any other State or Territory may transact business, or hold and dispose of property in this Territory, without appointing an agent upon whom service of legal process may be made, and an authenticated copy of such commission shall be filed and recorded in the office of the secretary of the Territory, and of the register of deeds of the county where such agent resides. It shall also file a copy of charter or articles of incorporation with the secretary of the Territory; and the agent referred to shall reside in the county where the principal business of the corporation is to be conducted. Statutory provisions for examination by legislature into the affairs and condition of any corporation in the Territory. Guaranty companies, authorized under the laws of the Territory, may make official bonds, and officers may charge expense of bond to their trusts.

Courts. The courts of the Territory are: Supreme, district, probate, and justice of the peace. Supreme court has appellate jurisdiction. Justice of the peace has jurisdiction of civil actions involving amount not in excess of $100. Probate court has jurisdiction of all matters, probate and civil actions, up to $1,000. But neither the probate nor justice's court has jurisdiction of actions upon real estate contracts, libel and slander, misconduct in office, or malicious prosecution. The district court has general jurisdiction. It has also the jurisdiction of the United States district and circuit courts. The district court judges are justices of the supreme court. Terms of the district court are fixed by the supreme court. Probate court has a regular term every other month, commencing with January of each year. Justice court is always in session.

Days of Grace. (*See Notes and Bills of Exchange.*)

Depositions may be taken at any time after service upon defendant, before a judge, a clerk of court of record, county clerk, justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, etc. Officer must not be a relative or attorney of either party, or otherwise interested. May be taken upon written notice, specifying the action, or proceeding, the name of the court in which it is to be used, and the time and place of taking the same, which notice shall be served upon the adverse party, or his attorney. The notice must be served so as to allow the adverse party sufficient time, by the usual route of travel to attend, and one day for preparation, exclusive of Sunday and the day of service; and the examination may, if so stated in the notice, be adjourned from day to day. Deposition, after taken, must be sealed, indorsed with the title of the case and the name of the officer taking same, and addressed to the clerk of the court where the action is pending, and must be on file at least one day before the day of trial. The fees of the officer should be indorsed on the deposition, which may be retained until they are paid, and it should be shown by whom paid. The court, or judge, may grant a commission to take depositions, but same must then be taken upon written interrogatories.

Descent and Distribution of Property. (*See Wills.*) Property, not disposed of by will, descends as follows: 1. If decedent leave a surviving husband or wife, and one child, in equal shares to surviving husband or wife, and child, or issue of child; if more than one child, then one-third to surviving husband or wife, and in equal shares to children, or issue. But if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants. If decedent leave no surviving husband or wife, but leaves issue, the whole estate descends equally to children, or issue thereof. 2. If decedent leave no issue, estate goes in equal shares to surviving husband or wife, and to decedent's father; if no father, then one-half goes in equal shares to brothers and sisters of decedent or their children. If he leave a mother, also, she takes an equal share with brothers and sisters. If decedent leave no issue, nor husband nor wife, the estate must go to the father. 3. If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to brothers and sisters, or their children; if a mother survive, she takes an equal share with the brothers and sisters. 4. If decedent leave no issue, nor husband nor wife, nor father, and no brother or sister is living at the time of his death, the estate goes to his mother, to the exclusion of the issue, if any, of deceased brothers and sisters. 5. Other more remote descents particularly set forth. Dower and courtesy are abolished. Aliens may take in all cases, by succession as well as citizens. If no one capable of succeeding to estate, same escheats to the Territory.

Divorce. Causes are as follows: 1. When either of the parties had a former husband or wife living at time of subsequent marriage. 2. Abandonment for one year. 3. Adultery. 4. Impotency. 5. When the wife at time of marriage, was pregnant by another than her husband. 6. Extreme cruelty. 7. Fraudulent contract. 8. Habitual drunkenness. 9. Gross neglect of duty. 10. The conviction of a felony, and imprisonment therefor, subsequent to marriage. The plaintiff must have been an actual resident, in good faith, of the Territory, for one year next preceding the filing of the petition, and of the county at time petition is filed. Wife may be restored to maiden name, and her individual property, acquired by her before or after marriage, and alimony in discretion of the court. Decree takes effect and becomes absolute after six months from time rendered. Proof is required in all cases.

Executions. All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, are bound from the time seized in execution. When two or more writs are sued out against same debtor during the term in which judgment is rendered, or within ten days thereafter, no preference is allowed to either; and if the proceeeds fail to satisfy all such executions, they must be distributed among all creditors; but these provisions do not affect any preferable lien under judgment on the land of the debtor. Writ must be returnable in sixty days, except before justices of the peace, where it must be returned in thirty days. First levy to be made upon goods and chattels, but, if none found, then upon lands and tenements. Statutory provisions for subjecting debtor's property by proceedings supplemental to execution.

Exemptions. To the head of a family, not exceeding 160 acres in one tract, including improvements; in city or town, not more than one acre; all household and kitchen furniture, lot in cemetery, all implements of husbandry; tools, apparatus, and books used in trade or profession; family library, portraits, and wearing apparel; five milk cows and their calves; one yoke of oxen, with yokes and chains; two horses or mules; a wagon, or cart, or dray, or carriage, or buggy; gun; ten hogs, twenty sheep; saddles, bridles, and harness for use of family; provisions; forage on hand or growing for home consumption and for use of exempt stock for one year; current wages and earnings for personal and professional services within last ninety days. The foregoing are not allowed to a corporation for profit, to a non-resident, to a debtor who is in the act of removing his family from the Territory, or who has absconded, taking with him his family. To a single person: Lot or lots in cemetery held for sepulcher; all wearing apparel, tools, apparatus, and books belonging to any trade or profession; one horse, bridle, and saddle; one yoke of oxen; current wages for personal services. The homestead is not exempt where debt is due for purchase money or part of same, for taxes, for work and material used in the construction of improvements thereon, or for liens given by the owner. Personal property is not exempt when the debt is due for rents or advancements of landlord to tenant, or to debts secured by lien. Personal property is not exempt from execution or attachment for wages of clerk, mechanic, laborer, or servant. All pension money is exempt.

Fraud. Fraud in adulterating food, in assignments, conveyances, and spreading false rumors to effect market, misdemeanors. Usual provisions of statute of frauds in force. Avoids contracts.

Garnishment. Either at the time of the issuing of the summons, or at any time thereafter, before final judgment, in any action to recover damages founded upon contract, express or implied, or upon judgment or decree, or at any time after the issuance, in case of an execution against property, and before the time when it is returnable, the plaintiff, or some person in his behalf, shall file with the clerk an affidavit stating the amount of the plaintiff's claim against the defendant or defendants over and above all offsets, and stating that he verily believes that some person, naming him, is indebted to, or has property, real or personal, in his possession, or under his control belonging to the defendant, or either or any of the defendants, in the action or execution, naming him, and that such defendant has not property liable to execution sufficient to satisfy the plaintiff's demand, and that the indebtedness or property mentioned in such affidavit is, to the best knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution. Any number of garnishees may be embraced in the same affidavit and summons hereinafter provided for; but if a joint liability be claimed against any, it shall be so stated in such affidavit, and the garnishee named as jointly liable shall be deemed jointly proceeded against; otherwise the several garnishees shall be deemed severally proceeded against: Provided, that before order will issue, statutory undertaking must be given, except in cases against non-residents. Summons is returnable in five days. The same and other garnishees may be subsequently proceeded against in same action. Garnishee has twenty days to answer; plaintiff must join issue. If any garnishee, having been duly summoned, shall fail to file his affidavit, the court may render judgment against him for the amount the plaintiff shall recover against the defendant. Garnishee may be proceeded against as for contempt. Proceedings after judgment may be instituted similarly to those before judgment.

Guaranty Companies may do business in the Territory by appointing local agent on whom legal process may be served, and making showing of charter, assets, and liabilities to attorney-general.

Holidays. Holidays are every Sunday, first day of January, twenty-second day of February, fourth day of July, twenty-fifth day of December, thirtieth day of May, days upon which elections are held throughout Territory, and days appointed by President, or Governor of Territory for a public fast, thanksgiving, or holiday. If first day of January, twenty-second day of February, fourth day of July, or twenty-fifth day of December falls upon a Sunday, the following Monday is a holiday. Acts of a secular nature, appointed by law or contract to be performed on a holiday, may be performed on the next business day, with full effect.

Husband and Wife. Wife must conform to husband's choice of any reasonable place or mode of living. (*See Married Women.*) Can not by contract alter their legal relations, except as to property, and except that they may agree in writing to immediate separation, and make provision for support of either and children. Mutual consent is sufficient consideration for such agreement. Neither husband nor wife is answerable for the acts of the other, except support by necessaries. The statute provides that in case of abandonment by one, and removal from Territory, for one year, the other may procure order from district court to sell, incumber, manage, or control property of former.

Interest. Maximum rate is 12 per cent. Usury forfeits interest, but does not affect principal. In absence of stipulation, legal rate is 7 per cent from maturity.

Judgments. Judgments are liens against real estate for five years. If rendered before a justice of the peace or probate judge, they become liens upon the filing of a certified copy with the clerk of the district court. If execution shall not be sued out within five years from the date of any judgment that now is or may hereafter be rendered in any court of record in this Territory, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor. Judgment may be revived upon proper application, and after notice, within one year after becoming dormant. Interest on judgments is 7 per cent per annum, but in case of contract, rate is same as contract, up to 12 per cent.

Limitations. Civil actions, other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards: 1. Within five years: An action upon any contract, agreement, or promise in writing. 2. Within three years: An action upon a contract not in writing, express or implied; an action upon a liability created by statute other than a forfeiture or penalty. 3. Within two years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud—the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud. 4. Within one year: An action on a foreign judgment; an action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation. 5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five years after the cause of action shall have accrued. 6. An action for relief, not hereinbefore provided for, can only be brought within five years after the cause of action shall have accrued.

Married Women retain the same legal existence and personality after marriage as before marriage, and receive the same protection of all their rights as women which their husbands do as men; and for an injury sustained to their reputation, person, property, character, or natural rights have the same right to appeal in their own names to courts of law or equity for redress and protection that their husbands have in their own names.

Mortgages. Mortgages of personal property must be signed by the mortgagor and attested by two witnesses, who must sign their names, and no further proof or acknowledgment is necessary. They may be foreclosed by action in court, or by public notice for ten days, and public sale. Chattels covered by mortgage may be levied upon by attachment or execution, if the officer pays or tenders to the mortgagee the amount of the mortgage debt and interest. The mortgage, or an authenticated copy thereof, must be filed with the register of deeds, and if not so filed, it is void as against creditors or subsequent purchasers and incumbrancers in good faith and for value. It becomes invalid after three years as against other creditors, subsequent purchasers or incumbrancers in good faith, but it may be renewed for an additional three years by filing an affidavit of renewal within thirty days before the expiration of the first three years. Real estate mortgages must be executed the same as a grant of real property.

Notes and Bills of Exchange. These are bills of exchange, promissory notes, banknotes, checks, bonds, and certificates of deposit. If without date they are payable immediately, and if without specified place of payment, payable where maker may be found. Valuable consideration is presumed from signature of drawer, acceptor, and indorser. Protest, presentment, and notice may be waived. Waiver of protest waives presentment and notice. Reasonable care and diligence in presentment required. In the absence of express stipulation to the contrary, three days of grace after presentation allowed on all bills of exchange, or drafts payable at sight, but Sundays and holidays are excluded in the computation. Same allowed for payment of all promissory notes, bills of exchange, and drafts where time is specified on face. Notes due on demand subject to like days of grace after demand is made. Damages for accrued interest, re-exchange, expenses, etc., are, if in this Territory, 2 per cent; in Nebraska, Iowa, Minnesota, Wisconsin, Illinois, and Missouri, 2 per cent, in any other State or Territory, 5 per cent, and in any foreign country 10 per cent. Waiver of presentment waives notice of dishonor also, unless contrary is expressly stipulated; but waiver of notice does not waive presentment. Indorser guarantees paper is what it purports

to be, good title, genuineness of prior indorsements, and payments. Indorser has rights of surety, but it is not entitled to contribution from subsequent indorsers. Indorsement without recourse makes indorser liable only as in cases of a transfer without indorsement.

Power of Attorney. The power of attorney in fact, for the conveyance of real estate, shall be executed and acknowledged same as acknowledgment of other conveyances of real estate. No deed, executed by virtue of such power, shall be received for record unless the power of attorney under which it is executed is, or has been, filed for record in the same office.

Probate Law. Complete statutory regulations.

Procedure. The pleadings are petition, answer and reply. Demurrer may be based on ground of want of jurisdiction, misjoinder of actions and parties, and failure to state cause of action.

Protest. (*See Notes and Bills of Exchange.*)

Replevin. An order for the delivery of property to the plaintiff shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, thowing: 1. A description of the property claimed. 2. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property. 3. That the property is wrongfully detained by the defendant. 4. That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine, or amercement assessed against him, or by virtue of an order of delivery issued under this article, or any other mesne or final process issued against said plaintiff. 5. Or if taken in execution, or on any order or judgment against the plaintiff, that it is exempt by law from being so taken. 6. The actual value of the property. When several articles are claimed, the value of each shall be stated as near as practicable. Before the order is issued the plaintiff must execute an undertaking, with one or more sufficient sureties, in not less than double the value of the property involved, and also to the effect that he will return the property to the defendant, if a return thereof be adjudged. Within twenty-four hours after service of a copy of the order, the defendant may recover possession of the property by executing his undertaking to the plaintiff, to be approved by the sheriff, in not less than double the value of the property set up by the plaintiff in his affidavit; otherwise the sheriff shall deliver the property to the plaintiff.

Taxes. Taxes on real property are a perpetual lien. They are a lien on personal property when delinquent two years. Taxes may be paid on third Monday in December. If so paid, taxpayer is entitled to rebate of 2 per cent of one-half of taxes, or one-half of tax may be paid at said date and remainder on third Monday in June. If one-half delinquent in December, the said 2 per cent is added until June, and if delinquent in June, there shall be added, in addition to the 2 per cent, the following penalties: 1 per cent for each month for 3 months; 2 per cent for each month for next three months, and 5 per cent for each succeeding month.

Wills. Married women may make same as if unmarried. To make nuncupative will valid the estate bequeathed must not exceed $1,000, must be proved by two witnesses who were present at the making thereof, one of whom was at the time asked by the testator to bear witness, or the decedent must, at time, have been in actual military service in the field or at sea, and in actual contemplation, fear, or peril of death. Olographic wills are valid without witnesses. Other wills must be signed by testator, or in his presence, at his direction, and he must, at the time of signing, declare to the attesting witnesses that the instrument is his will, and there must be two attesting witnesses who sign at testator's request and in his presence.

SYNOPSIS OF THE LAWS OF OREGON

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. PLATT & PLATT, Attorneys at Law, Portland. (*See Card in Attorneys' List.*)

Accounts. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

Acknowledgments may be taken *in the State* by any judge of the supreme court, county judge, justice of the peace, clerk of the supreme court, county clerk, or notary public. *Out of the State* before any officer authorized by the laws of the State, Territory or district where made, or by a commissioner appointed by the governor of this State for such purpose. If not taken before such commissioner, or before a notary public, certified under his notarial seal, or before the clerk of a court of record, certified under the seal of the court (Laws 1891), it must have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which it was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine; and that the deed is executed and acknowledged according to the laws of such State, Territory, or district. (*See Deeds.*)

Actions. The distinctions between actions at law are abolished. Every action shall be brought in the name of the real party in interest, but an executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whom the action is prosecuted. An action is commenced by filing a complaint with the clerk of the court, and is deemed commenced as to each defendant when the summons is served on him after the complaint is filed or has been placed in the sheriff's hands for service. The complaint, answer, and reply must be verified. A defendant must appear, plead, or answer within ten days from service of summons, if served in the county where the action is brought; within twenty days if served elsewhere in the State, and if served by publication by the last day of the time prescribed in the order for publication of summons which must be published once a week for not less than six weeks. Costs and disbursements are allowed the prevailing party, except that in equity the court may otherwise direct.

Administration of Estates. The county court of the county in which the deceased died has exclusive jurisdiction in the first instance. Letters shall be issued as follows: 1. To the widow or next of kin, or both, in the discretion of the court. 2. To one or more of the principal creditors. 3. To any other suitable person whom the court may select, but a non-resident is not qualified to act as executor or administrator. Notice of appointment must be published and creditors notified to present their claims, duly verified, within six months from the date of notice. The executor or administrator must make and file under oath an inventory of all the property of the deceased coming into his possession or knowledge, which must be appraised by three disinterested, competent appraisers appointed by the court. Pending the granting of administration and filing of inventory, the widow and minor children are entitled to remain in possession of the homestead, family wearing apparel and household furniture, and have a reasonable provision for their support to be allowed by the court. After the filing of the inventory, the court shall set apart for the widow and children all property of the estate which is exempt from execution. Sales of the property of an estate are valid only when made by order of court, and in case of real property only upon a showing of necessity, and the issuance of citation. Sales must be confirmed at the next term of court. Reports must be made in April and October of each year until administration is complete. An action may be commenced against an executor or administrator any time after the expiration of six months and the granting of letters prior to the final settlement of the estate. Presentation of the plaintiff's claim to the executor or administrator and disallowance by him is a condition precedent to the bringing of action. Executor or administrator may redeem real property belonging to estate which has been sold at public auction under decree of foreclosure or judgment in same manner that property may be redeemed by any debtor. Upon proper showing to the county court executor or administrator may borrow money upon any property belonging to estate to facilitate the settlement of the estate.

Affidavits. An affidavit is a written declaration under oath, made without notice to the adverse party. The affiant must speak in the first person. An affidavit taken in another State of the United States or Territory, or the District of Columbia, or in a foreign country, otherwise than upon commission, must be authenticated as follows before it can be used in this State: First—It must be certified by a commissioner appointed by the Governor of this State to take affidavits, or it must be certified by a judge of a court having a clerk and a seal, to have been taken and subscribed to before him at the time and place therein specified, and the existence of the court, the fact that such judge is a member thereof, and the genuineness of his signature shall be certified by the clerk of the court under the seal thereof. Can not be used as testimony on a trial upon the merits against objections. The usual form and function of affidavits are that of proving service of a summons, notice, and facts in *ex parte* proceedings to obtain provisional remedies, viz:

State of.....} ss.
County of.....}

This certifies that on this.....day of.....19...., personally appeared before me the undersigned, a (name of office) in and for said county and State, the within named.....and..... ..... his wife, personally known to me to be the individuals described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate last above written.

[SEAL.] (Name and Title of Office.)

Age of Majority. Males, 21 years; females, 18 years.

Aliens. Aliens have the same right with reference to holding property in this State as citizen of the State. A wife is not barred of her dower by reason of alienage. A foreign corporation not prohibited by the laws of this State and having complied with our law with reference to doing business here, may hold property and convey the same as freely as domestic corporations.

Appeals. An appeal may be taken from the circuit to the supreme court by serving and filing the notice of appeal and bond at any time within six months from the date of judgment or decree appealed from. Appeal from justice and county court must be taken within thirty days.

Arrest. Arrest in civil cases is allowed in certain cases, but is a remedy very rarely resorted to.

Assignments and Insolvency. There is no insolvent law. There is an act governing assignments. No general assignment by an insolvent, or in contemplation of insolvency, for the benefit of creditors, is valid unless made for the benefit of all his creditors in proportion to the amount of their respective claims. The assent of creditors is presumed. The debtor selects his assignee. If not satisfied with the assignee chosen by the debtor, two or more creditors may apply by petition to the judge of the circuit court of county within thirty days from the making or recording of the assignment, and the judge will order a meeting of the creditors to choose an assignee in lieu of the one selected by the debtor. The assignee elected by the creditors must be a resident of the same county as the assignor. Creditors may appear at the meeting in person or by proxy, but, before being entitled to vote, must present to the county clerk, who presides at the creditors' meeting, a verified statement of their claims. A majority, in number and value, of the creditors attending the meeting, elect an assignee or assignees. All assignees must give bonds in double the value of the estate. An assignment discharges all at achments on which judgment has not been had at the time of the assignment. The assignee must give notice by publication and mailing to creditors, who have three months in which to present claims. Debts to become due, as well as debts due, may be presented. Exceptions may be filed to the demand of any creditor, and the court will pass upon them. The assignee has full power to dispose of the estate, real and personal, and distributes the proceeds among the creditors pro rata, under the order of the circuit court, which has exclusive jurisdiction of assignments. When it appears that the debtor has acted fairly and justly, and has been guilty of no fraud, or concealment of his property, and that his estate has been made to realize the fullest amount possible, and not less than 50 per cent of his indebtedness over and above all expenses, the court will, upon the allowance of the final account of the assignee, make an order discharging the debtor from all debts existing against him prior to the assignment. A debtor can prefer a creditor by confessing judgment, giving a mortgage or transferring specific property in payment.

Attachment process may be had in actions upon contracts, express or implied, for the direct payment of money, if the contract is not secured by mortgage, lien or pledge upon real or personal property, or if so secured the security has been rendered nugatory by the act of the defendant. Also in actions upon contract against a defendant not residing in this State. An affidavit must be made showing the existence of the facts, and a bond given equal to the amount of the judgment demanded. Debts owing the defendant may be garnisheed. An attachment is dissolved by an assignment before judgment.

Banks. There are no State banks, and no laws regulating banks or banking.

Section 1 of Article XI of the constitution of Oregon, provides that: "The legislative assembly shall not have the power to establish or incorporate any bank, or banking company or money institution whatever; nor shall any bank, company, or institution exist in the State with the privilege of making, issuing, or putting into circulation any bill, check, certificate, promissory note, or other paper, or the paper of any bank, company or person to circulate as money."

The business of banking is carried on by national banks, private corporations, firms, and individuals without any restrictions on the part of the State as to what investments they may make, or how their business shall be conducted.

Building and loan and savings and loan associations may be organized under the laws of this State by conforming to certain definite requirements of the statute. They must have a capital of not less than $1,000,000 and place a certain amount of approved securities under the control of the secretary of State. No building and loan associations or savings and loan associations, organized under the laws of any other State, Territory, or Nation, shall do business in this State unless it have approved securities of the value of $100,000 on deposit in trust for all its members and creditors with some responsible trust company. A certificate of such deposit shall be filed with the secretary of this State, and the amount of such securities shall not thereafter be reduced. Every such association organized under the laws of any other State shall, before commencing to do business in this State, file with the secretary of State, of this State, a duly authenticated copy of its charter or articles of incorporation and by-laws, and shall also file a duly authenticated copy of a resolution adopted by the board of directors of such association—appointing an attorney for such association, resident in this State upon whom legal process may be served. On or before the first day of September in each year every such association doing business in this State shall deposit with the secretary of State a report of its affairs for the year ending the 30th of June preceding, and such report must be verified, and if satisfactory to the secretary of State, he shall issue his certificate, stating that such corporation is entitled to do business in this State, which certificate shall be in force for one year only.

Bills of Lading. Making out or exhibiting any false or fraudulent invoice or bill of lading is punishable by imprisonment.

Chattel Mortgages. (*See Mortgages.*)

Claims for Collection. In sending claim for collection, if owned by a partnership, the individual name of each partner and the firm name should be stated, and if a corporation, in what State incorporated. The claim should be accompanied by an itemized statement, verified by the owner or his agent, or his attorney, if within the personal knowledge, to the effect that he believes it to be true, and that there are no just offsets, or counterclaims to the same, except as stated. (*See Accounts.*)

All claims to be filed with administrators or executors, assignees or receivers should be likewise verified.

Contracts. Whether joint or several, all or any of the parties to a contract may be included in the same action at the option of the plaintiff without releasing the others.

Corporations. Private corporations are formed under a general law by three or more persons. After one-half or more of the capital stock is subscribed, the stockholders meet and elect directors. A director must be a stockholder in the corporation and a resident of the State of Oregon; except, that in corporations for the purpose of constructing railroads or military wagon roads, canals or flumes, or carrying on mining enterprises, or publishing newspapers, or conducting institutions of learning, or for the purpose of conducting any manufacturing business, a minority of the board of directors may reside out of the State. Foreign corporations, upon complying with the laws of the State, may do business therein as like domestic corporations. Municipal corporations are created by special acts of the legislature.

Courtesy. The husband, on the death of his wife, shall hold the lands of which she was seized in her life-time as tenant by courtesy, and it is not necessary that there should have been issue born alive.

Courts. There is in each voting precinct a justice of the peace with limited criminal jurisdiction and civil jurisdiction up to $250. These courts are always open. Their process can not reach land. A county court in each county has exclusive probate jurisdiction and civil jurisdiction up to $500. They meet from four to twelve times a year. Circuit court has unlimited jurisdiction both in civil and criminal, and holds from one to three terms a year in each county. Supreme court with appellate jurisdiction only meets at Salem twice a year, and at Pendleton once a year.

Days of Grace. (*See Notes and Bills of Exchange.*)

Deeds executed in the State must have two witnesses and be signed and sealed and acknowledged by the grantors. A scroll by a pen is sufficient seal. Out of the State deeds may be executed according to the laws of the State, Territory, or district where made. (*See Acknowledgments.*) Deeds are recorded in the office of the county clerk of the county in which the land is situated. If not so recorded within five days, they are void against any subsequent purchaser in good faith, and for a valuable consideration whose conveyance is first recorded.

Depositions. In all affidavits and depositions the witness must be made to speak in the first person. Depositions shall be taken in the forms of questions and answers, unless the parties agree to a different mode. (Civil Code, 268.) Depositions of witnesses outside of the State may be taken upon a commission issued by the court or the clerk thereof, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or, if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court selected by the officer issuing it. (Civil Code, 270.) Such interrogatories, direct and cross, as the respective parties may prepare, may be annexed to the commission, or, when the parties agree to that mode, the examination may be without written interrogatories. (Civil Code, 270.) Either party may take the deposition of a witness in this State, before any person authorized to administer oaths, upon giving the adverse party three days' previous notice, and one day's additional notice for every twenty-five miles the witness resides from the place of trial, of the time and place of examination, the name of the officer and of the witness. Either party may attend upon such examination and examine the witness upon oral interrogatories. The depositions shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed it shall be read to or by the witness and subscribed by him. (Code, Sec. 823.) The officer taking the deposition shall append thereto his certificate, under the seal of his office, if there be a seal, to the effect that the deposition was taken before him, at a place mentioned, between certain hours of a day or days mentioned, and reduced to writing by a person therein named; that before proceeding to the examination the witness was duly sworn to tell the truth, the whole truth, and nothing but the truth; that the deposition was read to or by the witness, and then by him subscribed (Code, Sec. 825.) The deposition should then be securely sealed, and addressed to the court of the county issuing the commission. Upon the envelope should be indorsed the title of the case, and the words: "Deposition of ——."

Descent and Distribution of Property. Real property descends as follows: 1. In equal shares to children and issue of deceased children by right of representation. 2. If the intestate shall leave no lineal descendants, such real property shall descend to the wife or husband, if the intestate was married. If the intestate leave no wife or husband, then such real property shall descend to his or her father. 2. If the intestate shall leave no lineal descendants, neither husband, nor wife, nor father, such real property shall descend in equal shares to the brothers and sisters of the intestate, and to the issue of any deceased brother or sister by right of representation, but if the intestate shall leave a mother, also, she shall take an equal share with each brother and sister. 4. In the absence of lineal descendants, husband, wife, father, brother, or sister, the mother takes to the exclusion of the issue of deceased brother or sister. 5. In the absence of all the foregoing, the property descends to the next of kin, those claiming through the nearest ancestor being preferred. In case no kin are found, the property escheats to the State. Personal property descends the same as realty, except that husband surviving takes half wife's personalty, the wife surviving takes half husband's personalty, and survivor takes all in the absence of issue.

Divorce. Divorce may be decreed for either of the following causes: Adultery, impotency, conviction of felony, habitual gross drunkenness, willful desertion for one year, cruel and inhuman treatment, or personal indignities rendering life burdensome. Plaintiff must have resided in the State one year before beginning suit. The party at whose prayer divorce is decreed shall be entitled to the undivided one-third part of the whole of the real estate owned by the other at the time of such decree.

Dower. The widow of every deceased is entitled to dower during her natural life of one-half part of all the lands whereof her husband was seized during marriage, unless she is lawfully barred thereof. A husband, upon the death of the wife, may have estate in her lands as tenant by curtesy. Where a husband purchases land during coverture, and mortgages the same to secure payment of the purchase money, his widow is not entitled to dower as against the mortgagee, although she shall not have united in the mortgage. A woman is not barred of her dower by reason of being an alien.

Equity of Redemption. (*See Executions.*)

Escheats. Where there is no heir to deceased leaving property in this State, said property escheats to the State.

Executions. The party in whose favor judgment is given may at any time thereafter within ten years, have execution issued to enforce payment. After ten years, without the issuance of any execution, the judgment is conclusively presumed to have been paid. Execution may issue against the person or judgment debtor, against his property, or for the delivery of real or of personal property. The sale of property upon execution shall be made by auction. Property sold on execution, when subject to redemption, may be redeemed by the following persons: First—The judgment debtor or his successors in interest. Second—A creditor having a lien by judgment decree or mortgage on any portion of the property. A lien creditor may redeem within sixty days after confirmation of sale by the court. The judgment debtor may redeem within one year after confirmation. (Laws 1895.)

Exemptions. Homestead exempted from judicial sale. Must be actual abode of, and owned by family, and not exceed 160 acres, or one block if in city, or $1,500 in value. (Laws 1893, p. 93.) Personal property exempt includes books, pictures, and musical instruments to the value of $75; wearing apparel to the value of $100, and if a householder, to the value of $50 for each member of the family; tools, implements, apparatus, team, vehicle, harness, or library when necessary in the occupation or profession of a judgment debtor, to the amount of $400; if the judgment debtor be a householder, ten sheep with one year's fleece, two cows, five swine, household goods, furniture and utensils to the value of $300; the seat or pew occupied by a householder or his family in a place of public worship; all property of the State in any county, incorporated city, town, or village therein, or of any other public or municipal corporation. No article of property is exempt from execution issued upon a judgment for the purchase price. The judgment debtor must select and reserve such property as he claims as exempt at the time of levy. Earnings of judgment debtor for personal services for thirty days exempt when necessary for the family supported wholly or in part by judgment debtor.

Foreign Corporations. (*See Corporations, Insurance, Savings and Loan Associations.*)

Frauds. Every conveyance or assignment in writing or otherwise of any estate or interest in lands or personal property, and every charge upon lands, goods, things in action, or upon the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons, shall be void. Every grant or assignment of every existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent, lawfully authorized, shall be void. The question of fraudulent intent shall be deemed a question of fact, and not of law. No action can be brought to charge defendant upon any special promise to answer for the debt of another, or to charge any executor or administrator upon a promise to pay the debts of the decedent out of his own estate, or to charge any person upon an agreement made upon consideration of marriage, or upon an agreement upon its terms not to be performed within a year, or for the sale of personal property of more than $50 in value, or upon an agreement for the leasing for a longer period than a year, or for the sale of real property unless the same shall be in writing, signed by the parties sought to be charged, or by his duly authorized agent, and where the agreement concerns real property, and is made by the agent of the party sought to be charged, the authority of the agent must be in writing.

Garnishment. Attachment or execution may be levied upon personal property of the defendant in the hands of third persons, or on debts due defendant, by leaving a certified copy of the writ with the debtor, and such debtor or third person shall furnish the sheriff a certificate, showing property in his possession belonging to defendant. If the certificate is unsatisfactory, the garnishee may be examined under oath.

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. (*See Married Women.*)

Insurance. The secretary of State is insurance commissioner, and no company can do business without his license. Companies formed under the laws of the State must have at least five directors who are residents and property owners in the State and stockholders in the corporation, and a paid up, unimpaired, cash capital stock of $100,000 invested in the State in U. S., State, city, county, or school-district bonds, or notes secured by first mortgage on unincumbered real estate of double the value of the mortgage. They can not invest in mining stocks, nor make any loan to a stockholder, nor a stockholder be interested in any loan, pledge, security,

or property of the company, except to be a stockholder. Foreign companies must deposit with the State treasurer $50,000 in money, or in interest bearing U. S., State, county, city, or school-district bonds, the market value of which is at or above par, or bonds or notes secured by first mortgages upon unincumbered real estate within the State, of double the amount of the loan; or in lieu of such deposit, make an investment in real estate in the State of not less than $65,000 to be approved by the commissioner, the title to be vested in the State Treasurer as Trustee. The company receives the interest or income from the deposit or investment. No deposit can be withdrawn without six months publication of notice. Foreign corporations must also execute and record in each county where they have a resident agent, a power of attorney to some person, a resident and citizen of the State and United States, constituting him its attorney-in-fact upon whom service may be made, so as to give the courts jurisdiction of the company; and must show by the insurance reports or certificate of the Insurance Commissioner of some other State that they possess a paid up, unimpaired, cash capital of at least $200,000. Companies not incorporated in the United States, except marine companies, must have deposited or invested for the benefit of policy holders within the United States, in at least one State, a sum equal to $200,000 in excess of its liabilities in the United States. Orders, secret societies, and benevolent and co-operative associations, such as Masons, Odd Fellows, Druids, Knights of Pythias, Ancient Order of United Workmen, Grangers, Firemen, etc., are not insurance companies under this act. Face of policy true value in case of total loss and the measure of damage except in case of fraud or where loss is caused by criminal act of the assured. Fire insurance companies must pay an annual license of $50, and life and accident companies $100. Insurance brokers a quarterly license of $15. Every foreign insurance company must make an annual report to the insurance commissioner, showing the total gross premiums received, and from which shall be deducted returned premiums and losses paid in the State. A tax of 2 per cent must be paid to State treasurer upon gross receipts, less premiums returned and losses paid; $100 per day fine for failure to comply herewith.

Interest. Legal rate, 6 per cent; contracts may be made in writing for 10 per cent. Usury works forfeiture of principal and interest, but judgment will be rendered against defendant for the principal of the debt to be paid into the common school fund of the county in which suit was commenced.

Judgments are a lien from the date of docketing on all defendant's real property within the county or counties where same is docketed, and on all which he may subsequently acquire during the life of the judgment. If ten years are allowed to elapse without issuance of execution on the judgment the lien ceases, and the judgment is conclusively presumed to have been paid.

Liens. Person furnishing material or performing labor in building or repairing any structure or superstructure has a lien on the same and sufficient land for its enjoyment.

Hotel and boarding house keepers have lien on guests' baggage.

Common carriers and warehousemen have a lien for charges.

Various statutes provide for laborers' liens in certain cases.

Limitations of Suits. On contracts not under seal, express or implied, six years; on judgments or decrees of any court and sealed instruments, ten years; recovery real property, ten years. Revivor: Part payment or new promise in writing.

Married Women retain their real and personal estate owned by them at time of marriage or afterwards acquired, free from the debts and control of their husbands. A married woman may make contracts in her own name, buy goods, and give notes in settlement, and her real and personal property may be sold to satisfy the same. She may dispose of her real estate by will, subject to any rights which her husband may have as tenant by the curtesy. Wife may manage, sell, convey or devise by will to same extent and in same manner as her husband can. She is entitled to receive and hold the wages of her personal labor, and sue therefor in her own name, and she can prosecute and defend all actions for the preservation or protection of her property and rights as if unmarried. The expenses of the family and education of the children are chargeable upon the property of both husband and wife or either of them, and in relation thereto they may be sued jointly or separately. All laws imposing or recognizing civil disabilities upon the wife not imposed or recognized upon the husband (excepting the right to vote and hold office) have been repealed. The wife's dower and the husband's curtesy in real property are preserved.

Mortgages of real property and assignments thereof are executed and recorded in the same manner as deeds, and foreclosed by suit in equity. A satisfaction of a mortgage by the person appearing on the record as the owner thereof releases the land from the lien of said mortgage. Chattel mortgages, or copies thereof, must be immediately filed with the county clerk, and cease to be valid as against creditors or purchasers after the expiration of one year, unless within thirty days next preceding the expiration of said year there is an affidavit made and filed therewith, that the debt which it secures is unpaid and the mortgage still in force. A chattel mortgage may be recorded, in which case the renewal affidavit is not necessary. A chattel mortgage, where the mortgagor is allowed to remain in possession and dispose of the property in the usual course of his business, is void as to purchasers and attaching creditors.

Notes and Bills of Exchange. All negotiable instruments are commercial paper. They are not required to be paid at any particular place unless a place of payment is specified in the instrument. Days of grace abolished. No person can be charged as an acceptor of a bill of exchange, unless the acceptance be in writing, signed by himself or his lawful agent. Indorsers, if properly charged by protest, are liable as long as the maker. Damages allowed on protested bills of exchange: Domestic, 5 per cent; foreign, 10 per cent. Negotiable instruments falling due on a Sunday or a holiday become due on the next business day. Legal holidays are every Sunday, first day of January, twenty-second day of February, thirtieth day of May, first Monday in September, fourth day of July, twenty-fifth day of December, every day on which a general election is held, and every day appointed by the executive authority of the United States or this State as a day of fasting, thanksgiving or holiday. Where holiday falls on a Sunday, the Monday following shall be observed as such holiday. The Negotiable Instrument Law as prepared by American Bar Association has become a law.

Power of Attorney. Powers of attorney for conveyances of real estate, or whereby real estate is affected must be executed and acknowledged with the same formality that deeds to such property are made. A husband or wife may constitute the other his attorney to make conveyances of and dispose of his or her property, subject to revocation, the same as any other power of attorney.

Protest. (*See Notes and Bills of Exchange.*)

Replevin. In an action to recover possession of personal property, the plaintiff may, at any time after the action is commenced, and before judgment, claim the immediate delivery of such property, by filing an affidavit showing: That the plaintiff is the owner of the property claimed or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which may be set forth; that the property is wrongfully detained by the defendant; the alleged cause of the detention thereof, according to his best information and belief; that the same has not been taken for a tax, assessment or fine pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure; and the actual value of the property. The plaintiff may thereupon, by an indorsement in writing upon the affidavit, require the sheriff to take the property from the defendant, and deliver it to the plaintiff. Upon receipt of the affidavit, and a written undertaking, executed by two or more sureties, approved by him, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment of such sum as may be adjudged against the plaintiff, the sheriff shall forthwith take the property described in the affidavit into his possession.

Savings Banks. (*See Banks.*)

Suits. Practice is under a code similar to that of New York, but the distinction between law and equity is retained. Suits commenced in same manner as actions.

Surety Companies having assets not less than $500,000 can engage in business in Oregon. Must appoint Secretary of State attorney for service of process, file with him certified copy of articles of incorporation, make written application for authority to do business, and take out license.

Taxes. Lands sold for taxes may be redeemed within one year, on payment of the purchase money and 20 per cent thereon; within two years, 30 per cent.

Usury. (*See Interest.*)

Wills. Every person twenty-one years of age, of sound mind, may make a will of all his estate. Every person over eighteen years of age, of sound mind, may dispose of his goods and chattels. Every will shall be in writing, signed by the testator, or some other person under his direction, in his presence, and shall be attested by two or more competent witnesses subscribing their names to the will, in the presence of the testator. A will which fails to mention or provide for a living child is inoperative as to such child. A widow's dower can not be cut off by will. A legatee or devisee is not a competent witness to the execution of a will, unless he relinquishes all benefits thereunder.

SYNOPSIS OF THE LAWS OF PENNSYLVANIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and revised by MESSRS. McCREADY & MOORE, Attorneys at Law, Pittsburg, Pa. (*See Card in Attorneys' List.*)

Accounts are barred in six years from the dates of the respective items therein, except in the case of mutual accounts. For purpose of bringing suit thereon they are sufficiently proven by affidavit taken before any officer competent to take acknowledgment of deeds.

Acknowledgments of deeds of land in Pennsylvania taken elsewhere, may be made in the United States before any mayor or chief magistrate, or officer of any town or city where the deed is made, certified under the seal of such city or town, any judge of any court of record, any judge of a federal court, under the hand of the judge and seal of the court, commissioner for Pennsylvania, any officer in any State authorized by laws of said State to take acknowledgments, the authority to be proved by certificate of clerk of any court of record, under seal of court, or notary public; if made out of United States, any ambassador, and all persons exercising public ministerial functions appointed by United States, or notaries public. Acknowledgments within the State may be taken before notaries public, who may act in any county; judges of the supreme and common pleas courts, mayors and police magistrates and aldermen of Philadelphia, Pittsburg, Allegheny, Carbondale, Scranton, Williamsport, Lock Haven; recorder of deeds, prothonotary, or clerk of any court of record of the county in which the land is situated, and justices of the peace.

Actions. (*See Suits.*)

Administration of Estates. Letters testamentary and of administration are grantable only by the register of wills of the county within which was the family or principal residence of the decedent at the time of his decease, and if there be no such residence in this State, then by the register of the county in which the principal part of the goods and estate shall be. Letters testamentary, or of administration granted out of the State, do not confer power to act as executor or administrator within this commonwealth. A husband is legally entitled to administer the estate of his wife, in case of intestacy, and the wife has the same privilege with respect to the husband's estate. After the husband or wife, letters of administration are grantable to such of his relations, or kindred, as are entitled by law to the personal estate, according to the respective degrees of consanguinity—males being preferred to females. Administrators must give bond, with securities in double the amount of the personal estate; must file an inventory and appraisement of the personal estate within thirty days, and settle an account in one year from the date of their appointment. They are ordinarily entitled to a commission of 5 per cent. A widow is entitled to retain, for the use of herself and family, personal property to the amount of $300. A decedent's debts must be paid in the following order: 1.—Funeral expenses, medicine and medical attendance during last illness of the decedent, and servants' wages not exceeding one year. 2.—Rents not exceeding one year. 3.—All other debts, without regard to the quality of the same, except debts due the commonwealth, which shall be last paid.

Affidavits for use within this State may be taken before any officer authorized to take acknowledgment of deeds.

Aliens are not permitted to hold real estate in this commonwealth, but may engage in business and acquire and hold personal property.

Appeals may be taken from the judgment of any court of common pleas or orphans' court within six months from the entry of judgment, order, decree, or sentence to the Superior or Supreme court, according to the nature of the question or amount involved; but such appeal does not supersede an execution issued or distribution ordered, unless taken and perfected, and bail entered within three weeks from such entry. An appeal from the Superior to the Supreme Court, allowable only in certain cases, must be taken and perfected within three months. (*See Courts.*)

Arbitration of any pending suit may be compelled by either party thereto, but an appeal may be taken from the award and a trial had in court.

Arrest in civil cases, under capias, issued instead of summons to begin an action, may occur in actions of assumpsit (*see Suits*) in proceedings as for contempt, to enforce civil remedies, actions for fines or penalties, or on promises to marry, for moneys collected by a public officer, or for misconduct or neglect in any professional employment, which includes the failure by an attorney to pay over money collected for a client; and in actions of trespass (*see Suits*) on affidavit filed. A defendant may be arrested, after suit brought, by summons, upon proof that he is about to remove his property to defraud his creditors, or has done so, or that he fraudulently conceals his property, or that he fraudulently contracted the debt; he may be committed unless he pays the debt, or gives security to do so within sixty days, or gives bonds to take the benefit of the insolvent law. In criminal cases an information in writing, and under oath, must be made and a warrant procured from a magistrate before an arrest can be legally effected, except in case of an arrest upon view of the commission of a criminal offense. In civil cases, where the defendant is arrested on a bench warrant in a suit based on the allegation that the debt was fraudulently contracted, the defendant cannot secure his discharge from arrest and confinement (if directed by the court) by going into bankruptcy; since a discharge from bankruptcy does not discharge the bankrupt from debts fraudulently contracted.

Assignments and Insolvency. A debtor may make a voluntary assignment in trust for the benefit of all creditors, which must be recorded in thirty days. The assignment does not relieve the debtor from the debt. The assignee must file his inventory and appraisement within thirty days and must file his accounts in the court of common pleas under whose direction he is, and thereupon the court appoints an auditor to distribute the fund, to whom all claims must be presented, or they will not receive part of the estate. The insolvent laws in cases where imprisonment is still permitted allow a person to be discharged from prison, but do not relieve him from the debt. All preference in deeds of assignment for creditors is void.

Attachment Before Judgment. Property of resident debtors may be attached, when debtor is about to remove his property out of the jurisdiction of the court in which the attachment is applied for, with intent to defraud his creditors; when he has property which he fraudulently conceals; when he has disposed of or is about to dispose of his property, with intent to defraud his creditors; when he has fraudulently contracted the debt or incurred the obligation for which the claim is made. In this attachment the creditor must make affidavit to prove the existence of a debt in excess of $100, and one or more of the acts of fraud specified, and must give bond conditioned that, if he fails to prosecute his action with effect and to recover a judgment against the debtor, he shall pay to the debtor all legal costs and damages which the debtor may sustain by reason of said attachment. Attachment can also be had to seize and hold property of non-resident, but the sheriff will not actually seize property of the non-resident unless the plaintiff gives bond, although he will without bond serve the attachment so as to give the garnishee notice to hold the property or money of the non-resident pending final disposition of the suit. The non-resident defendant may have the attachment dissolved by giving bond. Attachment after judgment, in any case, may be issued in the nature of an execution.

Attorneys. It is a misdemeanor, punishable with one year's imprisonment or $500 fine, or both, for any one not a duly registered attorney to hold out that he is entitled to practice law, or that he, alone or with another, conducts a law office or law and collection office.

Banks. Any person or association of persons, not less than five, may organize banks of discount, deposit, and circulation, with a capital of not less than $50,000 nor more than $1,000,000. Whenever a person or association desires to establish a bank, or increase the capital, a certificate to that effect must be made for at least six months in at least three newspapers, one published at the seat of government and the other two in the city or county where such a bank is located. If a paper is published in German in the county, notice must be given in that language. When a copy of this certificate containing the name, place of business, amount of capital stock, with the number of shares into which the same shall be divided, is certified by the attorney general, it is recorded after the manner of deeds, and the governor, upon a certified copy of such certificate being produced before him, causes letters patent to be issued.

Every person or corporation to whom letters patent may be granted, is authorized to carry on business for twenty years from the date of patent. The auditor general is required to report annually to the legislature, within three days of the commencement of the session, a summary of the condition of every incorporated bank, with an abstract of the amount of banking capital returned by them. The capital stock of each bank is divided into shares of $50 each. It is the duty of every cashier to publish in the newspapers a statement giving the amount of assets and liabilities, circulation, deposits, gold, and silver, with all evidences of debt, with the personal and real property of the bank; and semi-annual reports are required. The auditor general is to require quarterly statements from cashiers of the condition of banks, and one of the statements shall be made in November. Stockholders are individually liable for the notes issued by the bank. Under the general laws a savings bank can invest in any good bonds or securities; but nearly all savings banks have special charters, and the regulations as to investments in them differ. By an act passed by the legislature of 1889, the organization of savings banks is facilitated, and their management carefully controlled. All banks, trust companies, and building associations are now under the control of the banking department created by act of February 11, 1895. This department is under the control of the commissioner of banking, who has large powers of supervision and control of all these institutions, and who has authority, upon the impairment of capital, to require it to be made good, or compel the appointment of a receiver.

Bills of Lading. A bill of lading has been defined by judicial authority to be a written acknowledgment signed by the master that he has received the goods therein described from the shipper to be transported on the terms therein expressed to the described place of destination, and there to be delivered to the consignee, or parties therein designated. Again, it has been defined to be a formal acknowledgment of the receipt of goods, and an engagement to deliver them to the consignee or his assigns. They may be transferred by endorsement and delivery unless the words "not negotiable" are plainly written or stamped on their face. The endorsee is taken to be the owner of the goods.

Chattel Mortgages and Deeds of Trust. (*See Mortgages.*)

Collaterals. A pledge or pawn is a bailment of goods, choses in action, or stocks by one person to another to secure the performance of some legal obligation. Delivery is essential to the creation of the pledge. Where the thing pledged as collateral security is given up to the pledger the pledge is defeated. A pledgee has an implied power to sell the thing pledged after default by the pledger. The pledgee may sell after the debt becomes due without judicial process, but must first demand payment of the debt, and give notice of the time and place of sale, unless it is otherwise stipulated in the contract.

Contracts may ordinarily either be specifically enforced in equity, or damages for the breach be recovered at law. Contracts for an interest in real estate, except leases for not exceeding three years; contracts to hold an executor or administrator individually, and to hold a guarantor or surety, must be in writing, unless the amount involved be less than $20.

Conveyances. (*See Acknowledgments.*)

Corporations. Many corporations in this State were created by special acts of assembly. Before the adoption of the new constitution of 1874, the general practice was to get an act of the legislature conferring corporate rights. The act of April 29, 1874, passed to carry out the provisions of the new constitution, provides for the incorporation of companies for a great variety of purposes. Such corporations are divided into two general classes—the first class, corporations not for profit; the second class, corporations for profit. The charter of an intended corporation must be subscribed by five or more persons, three of whom at least must be citizens of this commonwealth, and shall set forth: 1. The name of the corporation. 2. The purpose for which it is formed. 3. The place or places where its business is to be transacted. 4. The term for which it is to exist. 5. The names and residence of the subscribers and the number of shares subscribed by each. 6. The number of its directors and the names and residence of those who are chosen directors for the first year. 7. The amount of its capital stock, if any, and the number and par value of shares into which it is divided. Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in the proper county, for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor. The certificates of incorporation of the first class shall be acknowledged by at least three of those who subscribe to them before the recorder of deeds of the county in which the business of the corporation is to be transacted, to be their act and deed, and the same, being duly certified under the hand and official seal of the said recorder of deeds, shall be presented to a law judge of the said county, accompanied by proof of the publication of the notice of such application, who is hereby required to peruse and examine said instrument, and if the same shall be found to be in the proper form, and within the purposes named in the first class, and shall appear lawful and not injurious to the community, he shall indorse thereon these facts, and shall order and decree thereon that the charter is approved, and that upon the recording of the said charter and order the subscribers thereto and their associates shall be a corporation for the purposes therein stated, which charter shall be recorded in the office for the recording of deeds in said county. The certificate for a corporation of the second class shall set forth, as is required by those of the first class, and except building and loan associations shall also state that 10 per cent of the capital stock has been paid in cash to the treasurer of the intended corporation, and the name and residence of such treasurer. Said certificate shall be acknowledged by at least three of the subscribers thereto before the recorder of deeds of the county in which the chief operations are to be carried on, or in which the principal office is situated, and they shall also make and subscribe an oath or affirmation before him, to be indorsed on the said certificate, that the statements contained therein are true. The said certificate, accompanied with proof of publication of notice, as provided in corporations of the first class, shall then be produced to the governor of this commonwealth, who shall examine the same, and if found in proper form and within the provision of corporations of the second class he shall approve thereof and indorse his approval thereon, and direct letters patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen. The certificate shall be recorded in the office of the secretary of the commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish to the auditor general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation. The said original certificate, with all of its indorsements, shall then be recorded in the office for the recording of deeds in and for the county where the chief operations are to be carried on, and from thenceforth the subscribers thereto and their associates and successors shall be a corporation, for the purposes and upon the terms named in said charter. An act was approved June 25, 1895, permitting the creation of corporations to deal in merchandise at wholesale; but it is held not to include corporations to deal in liquors.

Courts. *Terms and Jurisdiction.* Courts of common pleas in the several counties have original jurisdiction in all sums over $100. Orphans' courts have full probate powers and entire control of decedents' estates. Justice's jurisdiction, $300. In Philadelphia there are magistrates supplying the place of justices of the peace, but having civil jurisdiction only to the amount of $100. The supreme court is the final appellate court in the State. Appeal lies from common pleas and orphans courts to the superior court in cases where the amount involved does not exceed $1,000, and in all criminal cases except felonious homicide. Appeal lies from the superior to the supreme court: 1. Where the jurisdiction of the superior court is in issue. 2. Where the construction or application of the constitution of the State or of the United States, or of any treaty or statute of the United States, is involved. 3. When an appeal is specially allowed by the superior court or by any one justice of the supreme court.

Days of Grace are abolished.

Depositions. In the courts of common pleas a rule to take the depositions of witnesses to be read in evidence is of course, and may be entered by either party, according to rule of court. Rules to take the depositions of ancient, infirm, sick, and away-going witnesses to be read in evidence may be entered in the case and upon the allocatur of a judge, which will be granted upon sufficient cause shown by affidavit stipulating such reasonable notice to the adverse party or attorney as the exigencies of the case may require. A rule for a commission to any other State or Territory of the United States, or to any other foreign state, is of course, and may be entered by either party in the office of the prothonotary, but the interrogatories of the applicant must be filed in the prothonotary's office at the time, and written notice of the rule and of the names of the commissioners, or their office titles, together with a copy of the interrogatories, must be served on the adverse party, his agent, or attorney at least fifteen days before the commission can issue, in order that the adverse party may file cross-interrogatories and nominate an additional commissioner or commissioners if he deems it necessary.

Descent and Distribution of Property. Estates of intestates are distributed as follows: 1. When intestate leaves a widow and issue, the widow takes one-third of the real estate for life and one-third of the personal estate absolutely. 2. When intestate leaves a widow and collateral heirs but no issue, the widow takes one-half of the real estate for life and one-half of the personal estate absolutely. 3. When intestate leaves a husband, he takes the whole of the personal estate and a life interest in the whole of the real estate. Subject to the above estates, real and personal property descends as follows: 1. To children equally

where there are children and no issue of deceased children. 2. To grandchildren equally where there are grandchildren and no children or issue of deceased grandchildren. 3. To descendants in any degree of consanguinity, so long as they are all in the same degree. 4. To descendants in different degrees as follows: (1) To each child of the intestate such share as such child would have received if all the children who have died leaving issue had been living at the death of the intestate. (2) If there be no children, each grandchild shall inherit in like manner as in the last case. (3) The issue of a deceased child, grandchild, or other descendant take by representation the share of their parent. In default of issue and subject to the estates of the widow or surviving husband, real estate goes to the father and mother of the intestate during their joint lives and the life of the survivor, and the personal estate to them absolutely. In default of issue and subject to the estates and interests of the widow or surviving husband, father and mother, the real estate descends as follows: 1. To brothers and sisters of the whole blood and the children of deceased brothers and sisters of the whole blood, who take the shares of their parents. 2. In default of brothers and sisters of the whole blood, to the children of such brothers and sisters. 3. To next of kin, being descendants of brothers and sisters of the whole blood. Personal estate descends in the same way without distinction of blood; and in default of the above classes, real estate descends to brothers and sisters of the half blood and their descendants, in the same way. In default of all persons hereinbefore described, real and personal estate descends to and is distributed among the next of kin of the intestate. In default of known heirs or kindred, the real estate vests absolutely in the widow or surviving husband; and the widow takes all of the personal property.

Divorce may be had *a vinculo* for the following causes, viz.: 1. Natural impotency. 2. A previous legal marriage still subsisting. 3. Adultery. 4. Willful and malicious desertion for a term of two years. 5. Cruel and barbarous treatment by a husband, so as to endanger a wife's life. 6. Where the alleged marriage was procured by fraud, force, or coercion, and has not been subsequently confirmed by acts of the injured party. 7. Where either party shall have been convicted of a felony, and sentenced to the penitentiary for more than two years. 8. Where a husband has offered such indignities to his wife's person as to make her condition intolerable and life burdensome, and thereby forces her to withdraw from his house and family. 9. Where a wife by cruel and barbarous treatment shall render the condition of her husband intolerable and his life burdensome.

Dower is allowed to widows out of the estate of their deceased husbands. Where there are no surviving children the dower is one-half of the personal estate absolutely, and one-half of the income of the real estate, and where there is a surviving child, one-third of the personal estate absolutely, and one-third of the income of the real estate during her life; and the widow may have her one-half or one-third of the real estate set aside so that she will thereafter get the income of such portion instead of one-half or one-third of the whole income.

Executions may be issued as soon as judgment is obtained. The writ of execution is made returnable to the first Monday of the following term; but it is the duty of the sheriff to make his levy at once, and he may proceed to sell personal property upon six days' notice, and distribute the proceeds. Stay of execution upon suits in court can be taken, by giving security, or under claim of freehold, on all sums of $200 and under, six months; between $200 and $500, nine months; over $500, twelve months. In suits before justices of the peace on sums between $5.33 and $20, three months; between $20 and $60, six months; and over $60, twelve months. The stay is computed from the first day of the term to which the action was commenced.

Exemptions. No homestead law. Real or personal property to the value of $300, in addition to wearing apparel, Bibles, and school books, and a sewing machine, are exempt, but the privilege is personal only and can be waived at any time. Type-writing machines, organs, etc., leased or hired, are exempt from sale on execution or distress for rent.

Fraud. (*See Attachment.*)

Garnishment may be had by attachment execution upon any existing judgment of any stock, debts, or deposits of money, or of goods and chattels pawned or pledged. By the attachment the garnishee is summoned to appear and show cause why the debt should not be collected from the effects of the defendant in his hands, and upon his appearance can be compelled to make full disclosure, under oath, in regard to all debts and effects of the defendant under his control.

Holidays. (*See Bills and Notes.*)

Husband and Wife. (*See Married Women.*)

Interest. The legal rate is 6 per cent; usurious interest can not be collected, and if paid may be recovered back, provided suit is brought therefor within six months after final payment of the debt. Most of the savings banks are by special statute authorized to loan money at higher rates of interest, but by act of 1878 all banking companies are prohibited from taking more than 6 per cent. Commission merchants and agents may contract with parties outside the State for 7 per cent. It is not usury for a borrower to contract to pay the taxes upon the money lent, nor to pay a reasonable attorney's fee in case suit is brought for its collection. Interest is due upon every debt from the time it becomes due and payable. The rate is the same on all debts, whether secured by judgment or not.

Judgments of record bind all the interest of defendant in real estate within the county where the judgment was entered, and under the act of March 23, 1877, a verdict of a jury for a specific sum (unless a new trial is granted) is also a lien on real estate. In either case the lien is against only real estate then owned in the county by the defendant. After-acquired real estate is not affected by the verdict or judgment; but a lien may be acquired on such after-acquired real estate by revival of the judgment as against it; and in the interim, by execution issued against such after-acquired real estate, and indexed in the judgment dockets. Lien exists for five years, and may be continued by revival of the judgment. Pending proceedings to revive a judgment, the lien may be held after five years by issuing execution against the real estate. Justice's judgments become liens by filing transcripts in the court of common pleas.

Limitations of Suits. Contracts, notes, and instruments not under seal, trespass, detinue, replevin, six years; action for trespass, to person, two years; for slander, one year; judgments, mortgages, and sealed instruments will be presumed to be paid after twenty years, but this presumption may be rebutted. Revivor: Acknowledgment, coupled with promise to pay; promise may be implied, if acknowledgment is plain, express, and nothing to negative such implication.

Married Women. By the act of June 8, 1893, it is enacted, etc., That a married woman shall have the same right and power as an unmarried person to acquire, own, possess, control, use, lease, sell or otherwise dispose of any property of any kind, real, personal, or mixed, and either in possession or expectancy, and may exercise the same right and power in the same manner and to the same extent as an unmarried person; but she may not mortgage or convey her real property unless her husband join in such mortgage or conveyance. She may make any contract, in writing or otherwise, which is necessary, appropriate, convenient, or advantageous to the exercise or enjoyment of the rights and powers above mentioned, but she may not become an accommodation endorser, maker, guarantor, or surety for another. She may sue and be sued civilly in all respects and in any form of action, and with the same effect and results and consequences as an unmarried person; but she may not sue her husband except in a proceeding for divorce, or in a proceeding to protect or recover her separate property whensoever he may have deserted or separated himself from her without sufficient cause, or may have neglected or refused to support her; nor may he sue her except in a proceeding for divorce, or to protect or recover his separate property when she may have deserted or separated herself from him without sufficient cause; nor may she be arrested or imprisoned for her torts. Both are competent witnesses in any such proceeding, but neither may testify to confidential communications made by one or the other, unless this privilege be waived at the trial. She may dispose of her property, real and personal, by will, in the same manner as if she were unmarried, but cannot thereby deprive her husband of his right as tenant by curtesy, nor his right to take under the interstate laws.

Mortgages are executed and acknowledged same as deeds, and lien inheres from time of recording except where given for purchase money, when the mortgage is a lien from its date, if recorded within sixty days. Chattel mortgages may be given on mining property, lumber, petroleum, iron, and other articles specified; must be for not less than $500, and must be filed of record. The lien thus created continues one year, and must be revived within thirty days of the expiration of that period, or it becomes void.

Notes and Bills of Exchange. The following days and half days namely: The first day of January, commonly called New Year's Day; the twelfth of February, known as Lincoln's Birthday; the twenty-second day of February, known as Washington's Birthday; Good Friday; the thirtieth of May, known as Memorial Day; the fourth of July, called Independence Day; the first Monday of September, known as Labor Day; the first Tuesday after the first Monday of November, Election Day; the twenty-fifth day of December, known as Christmas Day; and every Saturday after 12 o'clock noon until 12 o'clock midnight, and any day appointed or recommended by the governor of this State or the president of the United States as a day of thanksgiving and prayer or other religious observance shall for all purposes whatever as regards the presenting for payment or acceptance and as regards the protesting and giving notice of the dishonor of bills of exchange, checks, drafts and promissory notes be treated and considered as the first day of the week commonly called Sunday and as public holidays and half holidays and all such bills, checks, drafts, and notes otherwise presentable for acceptance or payment on any of the said days shall be deemed to be payable and be presentable for acceptance or payment on the secular or business day next succeeding such holiday or half holiday except drafts, checks, bills of exchange, and promissory notes, payable at sight or on demand, which would otherwise be payable at any half holiday Saturday, shall be deemed to be payable at or before twelve o'clock noon of such half holiday, provided, however, that for the purpose of protesting or otherwise holding liable any party to any bill of exchange, check, draft, or promissory note, and which shall not have been paid before twelve o'clock noon of any Saturday designated a half holiday, as aforesaid, a demand or acceptance or payment thereof shall not be made, and notice of protest or dishonor thereof shall not be given, until the next succeeding secular or business day. When holidays occur on Sunday, the following Monday is deemed a legal holiday. Any legal process had on a legal holiday or half holiday is valid; and such holidays and half holidays are treated as business days for all purposes save the presentation and protest of notes, drafts, etc. Days of grace upon all notes and bills of exchange are abolished after January 1, 1896, by act approved June 18, 1895.

Powers of Attorney may be acknowledged before any officer authorized to take acknowledgment of deeds. (*See Acknowledgments.*)

Probate Law. (*See Wills.*)

Protest. (*See Notes and Bills of Exchange.*)

Replevin may be instituted to recover the possession of personal property. The plaintiff is required to give bond to the sheriff in double the value of the property named in the writ, and the defendant may, if he desires to retain the property, give bond in a like sum. Property under levy or attachment can not be taken from a sheriff or constable by replevin. To try the title to property in such case the claimant must notify the constable of his claim and then has a remedy by suit for damages if his goods are sold as the goods of the defendant. When the property is in the hands of the sheriff the claimant must notify the sheriff of his claim and thereupon pay the sheriff $4. Whereupon the sheriff appraises and sets aside the goods claimed and then asks the court for a rule on the execution creditor and the claimant to maintain or relinquish their respective claims. If the goods were found in the possession of the defendant and the execution creditor avers that they belonged to the defendant, and at the same time the claimant makes out a *prima facie* title, an issue is framed under which the question of title is tried, the claimant either giving bond and taking the goods or allowing them to be sold and contesting for the proceeds. Upon the trial the ownership of the property is determined, and judgment entered accordingly in the action.

Suits may be commenced at any time. By act of 1887 the forms of action are reduced to two, viz.: ex contractu and ex delicto. For all demands ex contractu the remedy is a suit in assumpsit, and for all demands ex delicto the remedy is a suit in trespass. The statutory pleas in these suits are "non assumpsit" and "not guilty," respectively. All writs of summons are returnable on certain days set by rule of court (and which are in most counties monthly) and in default of an appearance and affidavit of defense judgment may be entered against defendant generally in ten or fifteen days after service. A summons from a justice of the peace (*see Courts*) is returnable on a day named therein, which must not be less than five nor more than eight days after the date of the writ, and must be served on the debtor at least four days before the date fixed for the hearing of the case. A plaintiff who is a non-resident of the State may have a summons returnable in not less than two nor more than four days by filing a sworn statement of his claim, with a copy of the same to be served with the summons, provided he give bond for costs.

Taxes. Improved lands may be sold for taxes two years delinquent, and "Unseated" lands may be sold for taxes delinquent one year, and are redeemable within two years by payment of taxes and costs and 25 per cent thereon.

Transfer of Corporation Stocks is ordinarily subject to the by-laws of the corporation, and is effected by surrender of certificate, and transfer upon the books of the corporation in person or by attorney.

Wills. Every person of sound mind (married women excepted) may dispose by will of his or her real estate, whether such estate be held in fee simple or for the life or lives of any other person or persons, and whether in severalty, joint tenancy, or common; and of his or her per-

sonal estate. Any married woman may dispose by her last will and testament of her separate property, real, personal, or mixed, whether the same accrue to her before or during coverture. Provided, That the said last will and testament be executed in the presence of two or more witnesses, neither of whom shall be her husband; and provided also, That no will shall be effectual unless the testator were, at the time of making the same, of the age of twenty-one years or upward, at which age the testator may dispose of real as well as personal or mixed property, if in other respects competent to make a will. Every will shall be in writing, and unless the person making the same shall be prevented by the extremity of his last sickness shall be signed by him at the end thereof, or by some person in his presence and by his express direction; and in all cases shall be proved by the oaths or affirmations of two or more competent witnesses, otherwise such will shall be of no effect. Provided, That personal estate may be bequeathed by a nuncupative will, under the following restrictions: 1. Such will shall in all cases be made during the last sickness of the testator, and in the house of his habitation or dwelling, or where he has resided for the space of ten days or more next before the making of such will, except where such person shall be surprised by sickness, being from his own house, and shall die before returning thereto; 2. Where the sum or value bequeathed shall exceed the sum of $100, it shall be proved that the testator, at the time of pronouncing the bequest, did bid the persons present, or some one of them, to bear witness that such was his will, or to that effect; and in all cases the foregoing requisites shall be proved by two or more witnesses, who were present at the time of making of such will. Provided, That notwithstanding this act, any mariner being at sea, or any soldier being in actual military service, may dispose of his movables, wages, and personal estate as he might have done before the making of this act. All devises of real estate shall pass the whole of the estate of the testator in the premises devised, although there be no words of inheritance or of perpetuity, unless it appear by a devise over, or by words of limitation, or otherwise in the will, that the testator intended to devise a less estate. The real estate acquired by a testator after making his will shall pass by a general devise, unless a contrary intention be manifest on the face of the will. A devise or bequest by a husband to his wife of any portion of his estate or property shall be deemed and taken to be in lieu and bar of her dower in the estate of such testator, in like manner as if it were so expressed in the will, unless such testator shall in his will declare otherwise. Provided, That nothing herein contained shall deprive the widow of her choice, either of dower or of the estate or property so devised or bequeathed. A devise or bequest in trust for any religious or charitable use, made within one calendar month prior to testator's death, is void.

SYNOPSIS OF THE LAWS OF RHODE ISLAND

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by WILLIAM G. RICH, Esq., Attorney at Law, Woonsocket. (*See Card in Attorneys' List.*)

Accounts. (*See Proof of Claims.*)

Acknowledgment of any instrument required by any statute of this State to be acknowledged shall be made, within this State, before any State senator, judge, justice of the peace, mayor, notary public, town clerk or recorder of deeds; without this State, and within the United States, before any judge or justice of a court of record or other court, justice of the peace, mayor, or notary public of the State, District of Columbia, or Territory in which such acknowledgment is made, or before any commissioner appointed by the governor of this State; without the limits of the United States, before any ambassador, minister, charge d'affaires, consul-general, vice-consul-general, consul, vice consul, consular agent, or commercial agent of the United States, or before any commissioner appointed by the governor of this State in the country in which such acknowledgment is made. (*See Title Deeds.*)

Actions and Suits. All actions and suits which concern realty must be brought in the county, or district, if in a district court, in which the land lies; all other actions and suits, either in the county or district where the plaintiff or defendant or some one of the parties plaintiff or defendant shall dwell, or in which the defendant or one of the defendants shall be found. (*See Title Courts.*)

Administration of Decedent's Estate. In grants of administration the widower or widow is preferred; after them the next of kin; and a bond (except from husband) in double the amount of the personal estate, with sufficient sureties, is required. (*See Claims against Estates of Deceased Persons.* Concerning limitations of actions, *see Limitations.*) Executors and administrators are required to account within two years after qualification. The court of probate may allow to the widow her wearing apparel and that of her children, bedding and other household goods, supplies on hand, and other property of the husband, exempt by law from attachment, as it shall judge necessary; and if there are no children it may set off to her such part of the real estate, not required for the payment of debts, as may be suitable for her support, and be, in accordance with the circumstances of the estate, held, in addition to her dower, upon the same terms and conditions and for the same period that she holds dower.

Affidavits may be taken by any magistrate within the State and before any commissioner appointed by the governor within the State or county described in the commission. Affidavits to be used in this State may usually be taken outside of Rhode Island, before magistrates authorized to take depositions. No particular form is prescribed.

Aliens may take, hold, convey, and transmit title to real estate, and may sue for and recover possession of the same in the same way and with the same effect as if they were native-born citizens of the United States.

Appeals may be taken from any decree or order of a probate court or town council to the appellate division of the supreme court within forty days after the decree or order; and from any district court to the common pleas division of the supreme court in any criminal case within five days after conviction; and in any civil case by claim of jury trial within two days after decision; except that in cases for possession of tenements, etc., the claim must be made within six hours after decision.

Arbitration. Controversies or claims relating to estates in the hands of trustees, executors, administrators, and other fiduciaries may be settled by arbitration and award, under authority of the appellate division of the supreme court.

Arrest. The writ may be made to run against the body of the defendant, in the first instance, in any action founded upon a cause of action, except for the recovery of debt or of State or town taxes, and after judgment the execution shall issue as of course running against the goods and chattels and real estate of the defendant, and for want thereof, against his body; also in actions for debts contracted prior to July 1, 1870; and also "whenever the plaintiff in action to be commenced by such writ, his agent or attorney, shall make affidavit to be endorsed thereon or annexed thereto, that the plaintiff has a just claim against the defendant that is due, upon which the plaintiff expects to recover in the action commenced by such writ a sum sufficient to give jurisdiction to the court to which such writ is returnable; and also either that the defendant to be arrested is about to leave the State, without leaving therein real or personal estate whereon an execution that may be obtained in such action can be served, and the plaintiff (or one of the plaintiffs) is an actual resident of the State of Rhode Island; or, that the defendant to be arrested has committed fraud in fact, involving moral turpitude or intentional wrong, either in contracting the debt upon which the action is founded, or in the concealment of his property or in the disposition of the same." The law does not require any bond from the plaintiff, except that one is sometimes given to the sheriff for his protection in doubtful cases. No female shall be arrested in any civil action founded on contract.

Assignments. (*See Insolvency.*)

Attachment. Attachment process may be issued from the common pleas division of the supreme court, or any district court, whenever the plaintiff in the action to be commenced by such writ, his agent or attorney, shall make affidavit that the plaintiff has a just claim against the defendant, which is due, upon which the plaintiff expects to recover in such action a sum sufficient to give jurisdiction to the court in which such writ is returnable. Personal property of the debtor (unless secured by bill of exchange or negotiable promissory note), in the hands of any person, partnership, or corporation, is subject to garnishment.

Banks. There are six of these institutions, all chartered before national banks were created by congress, total capital, $916,675; bills in circulation, $974. Banks, like all business corporations, are, under the constitution of Rhode Island, chartered by special act presented to one legislature, and, after public notice, granted by a succeeding legislature. In most charters now in force is a provision making stockholders liable for all debts of the bank. The legislature, or the governor, when the legislature is not in session, may at any time appoint a special commission to examine one or more banks; and if three or more officers, stockholders, or creditors of any bank, make a written complaint, the governor shall appoint such a commission. Banks are not required to make public statements of their condition, but must report to the State auditor on a day between November 15th and December 15th in each year, the day to be subsequently designated by him. These reports are quite full, covering substantially what is reported by national banks. An abstract of all the reports is published by the State auditor as soon as may be. Savings banks may invest in public stocks or bonds of any State or of the United States, or in any bank stock, or in notes or bonds of any town or city, or in notes of any school district or fire district in New England, or in such corporate stocks or bonds as they deem safe, or they may discount notes, bonds, or drafts of individuals or corporations, with two other responsible indorsers, sureties, or guarantors and other notes, bonds, or drafts properly secured by public notes, etc., or by mortgage on real estate.

Chattel Mortgages must be acknowledged; same must also be recorded, or else possession of the mortgaged property must be taken and retained by mortgagee within five days from the date of the signing thereof. Foreclosure is usually effected by sale under power in the mortgage. Mortgagor may redeem at any time within sixty days after condition broken, unless the property shall have been sold pursuant to the contract between the parties.

Claims against Estates of Deceased Persons. All claims must be presented to the executor or administrator, or filed in the office of the probate clerk, within six months from the date of the first advertisement of the notice of his qualification, or within any longer period not exceeding one year from such date, if the probate court shall establish such longer period. No claims other than those presented as aforesaid can be enforced against said estate. Debts due to the United States, the necessary funeral charges of the deceased, the charges for medical attendance and nursing specially employed, and medicines used in the last illness, debts due to this State, and all State and town taxes, are to be first paid, and in the order in which they are named. If a commission on either solvent or insolvent estates be requested, such commission shall be appointed by the court at once, and shall report on the contested claims within a period of three months, unless further time be allowed for cause shown. Such commissioners shall give due notice of the times and places of their meetings to hear the creditors on their claims, and they or either of them may administer oaths to and compel the attendance of witnesses. Any person whose claim is not allowed in the whole by the commission shall have the right to appeal to the appellate division of the supreme court, or claim a jury trial in the common pleas division of the supreme court.

Collaterals. No person holding stock in any manufacturing corporation as collateral security, shall be personally liable, by virtue of such stock, to any liabilities as a stockholder of such company.

Contracts. All contracts made by any person under guardianship shall be void. Assignments of wages to be earned in the future will be void unless recorded, except that the same shall be valid between the parties thereto. Contracts for the sale of lands, or the lease thereof for a longer time than one year; upon consideration of marriage; or not to be performed within one year from the making thereof, must be in writing and signed by the party to be charged or his lawfully authorized agent.

Conveyances. (*See Title, Deeds.*)

Corporations. No corporation to carry on the business of insurance or banking, no bank, savings bank, trust company, or corporation trading in bonds, notes, or other evidences of indebtedness, shall be created except on petition to the general assembly. All kinds of corporations may be created by the general assembly under special charter, but corporations for business purposes, except those kinds above enumerated, may be created by means of articles of association setting forth: 1. The agreement of any three or more corporators to constitute a corporation; 2. Name by which it shall be known; 3. The purpose for which constituted. 4. Place or places of its location. 5. If it have a capital stock, the amount, whether common or preferred, and how much of each, number of shares each person is to take, and par value of shares. Same articles to be signed by all the corporators, stating residence of each, and same shall be acknowledged as deeds of real estate are required to be acknowledged, and then shall be filed in the office of the secretary of State. The secretary of State issues a certificate under the seal of the State which shall be conclusive evidence of the existence of such corporation. (See General Laws, Chap. 176.) All manufacturing and some other business corporations are subject to certain provisions of the statutes, among the most important of which is the liability of its members, jointly and severally ("limited to the shares of such members in such corporations paid up to the par value thereof") for all the debts and contracts of the corporation until the whole amount of the capital stock shall have been paid in and a certificate thereof, signed and sworn to by the president, treasurer, and clerk, and by a majority of the directors, shall have been recorded in the

office of the town clerk of the town in which the manufactory of the corporation is established. After the making and recording of such certificate the stockholders shall also be under the same liability, and also "in an additional amount up to, but not exceeding, the par value of their said shares," unless a certificate, signed by a majority of the directors, truly stating the amount of the capital stock actually paid in, the value, as last assessed for a town tax, of the corporation's real estate, the value of its personal assets, and the amount of its debts and liabilities on the 31st day of December of the year last preceding, shall be recorded annually in such town clerk's office on or before the 15th day of February. But if this annual certificate be not so made and filed by a majority of the directors or other officers of such company, any stockholder may exempt himself from liability for its debts in consequence of such neglect by filing in such town clerk's office, on or before the 25th day of the same February, a true return, under oath, of the situation of the corporation in the same matters, as nearly as he can ascertain them, or by filing in the said office a statement, under oath, that a majority of the directors or other officers of such company have been requested by him to make the return required, and that they have refused or neglected so to do, and that the stockholder is not able to make the required return; such statement so made by a stockholder and filed as aforesaid shall be published in some daily newspaper published in Providence, and if said corporation is located without Providence county, in a newspaper in the county where the corporation is located. If any of the officers neglect or refuse to make and record the first return of the capital paid in, within ten days after it is paid in, they shall be jointly and severally liable for all debts contracted after said ten days and until the certificate is recorded. (See General Laws, Chap. 180, and Amended Constitution of Rhode Island, Art. IV, Sec. 17.)

Courts. *Terms and Jurisdiction.* The supreme court has full equity powers and it is the supreme court of probate. The law provides for an appellate division, and also for a common pleas division, of said court. The appellate division is in session from the third Monday in September to the third Monday in July in every year in Providence, except that on the third Monday in September and on the second Monday in May it shall attend at Newport, within and for the county of Newport, and on the second Monday in November and on the second Monday in April it shall attend at South Kingston, within and for the county of Washington, to the business of the division arising in said counties, respectively. The common pleas division in Providence county holds one continuous session, commencing on the third Monday in September and ending on the third Monday in the following July; and in each of the other counties it holds four sessions yearly and every year. The appellate division has exclusive jurisdiction of all suits and proceedings in equity, to issue all prerogative and all extraordinary writs and processes, and of petitions for divorce and alimony, and petitions for a new trial in any case. Common pleas division has original jurisdiction where the claim or demand exceeds $300. The State is divided into twelve districts, in each of which is a district court, having jurisdiction in civil causes when the sum sued for does not exceed $300. The town councils are courts of probate within their respective towns, and the municipal court of Providence is the court of probate of that city. Any town may, however, elect a probate judge at its annual election.

Days of Grace. (*See Notes and Bills of Exchange.*)

Deeds. Every conveyance of lands, tenements, or hereditaments absolutely, by way of mortgage, or on condition, use, or trust, for any term longer than one year, shall be void unless made in writing, duly signed, acknowledged, delivered, and recorded in the records of land-evidence in the town or city where the said lands, tenements or hereditaments are situated: *Provided, however*, that the same, if delivered, as between the party and their heirs, and as against those taking by gift or devise, or those having notice thereof, shall be valid and binding, though not acknowledged or recorded. Such instrument may be referred to as, and shall be, a deed, though no seal be affixed thereto. Acknowledgment of any deed must be by all the parties grantors, including married women, even though releasing dower only. (*See Acknowledgment.*)

Depositions. Except in equity cases, any justice of the supreme court, justice of the peace, or notary public, may take the depositions of any witness, to be used in the trial of any civil suit, action, petition, or proceeding, in which he is not interested, nor counsel, nor the attorney of either party, and which shall then be commenced or pending in this State, or in any other State, or in the District of Columbia, or in any territory, government or country. Previous to the taking of any deposition as aforesaid within this State, the official authorized to take the same shall, in all cases, cause the adverse party, or his attorney of record, to be notified of the time and place appointed for taking such deposition, so that he may attend and put interrogatories to the deponent if he think fit. Depositions taken without this State to be used in the tribunals thereof, may be taken by such person and in the manner and with the formalities required by the law of the State, District of Columbia, territory or country in which the same shall be taken. Every person, before deposing, shall be sworn to testify the truth, the whole truth and nothing but the truth, and shall subscribe his name to such deposition in the presence of the official before whom the same was taken. The deposition, so taken, shall be retained by such magistrate, officer, or commissioner, until he deliver the same with his own hand to the court for which it is taken, or shall, together with a certificate of its having been duly taken, be, by said magistrate, officer, or commissioner, sealed up and directed to such court, and remain so sealed until opened by order of the court, or of some justice thereof, or by the clerk, by the consent of the parties; and any person may be compelled to appear and depose as aforesaid within this State, in the same manner as to appear and testify in court.

Instructions for Taking Depositions. The magistrate, officer, or commissioner authorized to take depositions, in his notification to the adverse party, should state the time and place appointed, and the names of witnesses to be examined, which must be served by a proper officer, or by any impartial or disinterested person, who must make oath to his return. The depositions, when taken, will be returned under seal to the court in which the suit is pending with a certificate, indorsed by the magistrate, of the contents and name of the case.

Descent and Distribution. Real estate of an intestate descends in the following order: 1. To children or their descendants. 2. To father. 3. To mother, brothers and sisters and their descendants. In default of these, in equal moieties to the paternal and maternal kindred: 1. To grandfather. 2. To grandmother, uncles and aunts, or their descendants. 3. To great-grandfathers or great-grandfather, if there be but one. 4. To great-grandmothers or great-grandmother, if there be but one, and the brothers and sisters of grandfathers and grandmothers, and their descendants; and so on without end. If the title of the intestate came "by descent, gift, or devise from the parent or other kindred of the intestate, and such intestate die without children, such estate shall go to the kin next to the intestate of the blood of the person from whom such estate came or descended, if any there be." Dower and curtesy exists substantially as at common law. Personal estate, not bequeathed, is distributed as follows, viz.: 1. One-half to the widow of person dying without issue. 2. One-third to the widow when there is issue living. 3. The remainder is distributed in manner provided for the descent of real estate, but without regard to the person from whom such personal estate came or descended. Upon the decease of a married woman the whole goes to her surviving husband.

Divorce may be granted by the appellate division of the supreme court upon the petition of a domiciled inhabitant of the State, who has resided therein for one year next before preferring his petition, for either of the following causes, viz.: Marriage originally void or voidable by law; when party is for crime deemed to be civilly dead (i. e., convicted of murder or arson), or from absence may be presumed to be dead; impotency, adultery, extreme cruelty, willful desertion for five years, or for a shorter period, in the discretion of the court; continued drunkenness; neglect or refusal of the husband, he being of sufficient ability, to provide necessaries for subsistence of the wife; and for other gross misbehavior and wickedness repugnant to and in violation of the marriage covenant.

Dower. (*See Descent and Distribution.*)

Executions. Execution issues after twenty-four hours immediately following the entry of judgment; returnable three months after date thereof in district court, and in six months in other courts; can only be stayed by order of the court. There is no redemption of property sold under execution. In default of goods and chattels or real estate on which to levy, execution may issue against the body of the debtor in cases where fraud is alleged, and for recovery of costs in actions of trespass and ejectment.

Exemptions. No homestead law. Necessary wearing apparel of debtor and his family; working tools of a debtor, not exceeding $200, including the professional library of any professional man in actual practice, and household furniture and family stores $300, are exempt from attachment and execution, where the debtor is a householder.

Garnishment. Personal estate of the defendant in the hands of any person, copartnership, or corporation may be attached. The debtor of the defendant should file an affidavit setting forth his liability, etc.

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. (*See Married Women.*)

Insolvency. The appellate division of the supreme court has jurisdiction of cases and proceedings in insolvency. Any inhabitant of, corporation chartered by or under the authority of, copartners whose firm is established and doing business in a copartnership established and doing business in this State, who is insolvent and owes debts in this State to the amount of $300 or more, may prefer his voluntary petition under oath for relief as an insolvent. Such petitioner shall also file under oath, with his petition, an exhibit containing a statement of all debts, and the creditors, and of the evidences and securities of the amounts due, and an exhibit containing a schedule of all his property, assets and estate, except only such property, other than bills of exchange and negotiable promissory notes, as is exempt from attachment by law. The filing thereof shall be an act of insolvency, and upon proof of the facts therein stated to the satisfaction of the court, such petitioner shall be adjudged insolvent. One or more creditors holding in the aggregate claims not less than one-fourth in amount of all the debts against an inhabitant of this State owing debts in this State to the amount of $300 or over, may prefer a petition in insolvency against such debtor, alleging that such debtor, within four months prior to the filing of the petition, has procured or suffered to remain for forty days an attachment of or levy upon his property, with intent to give or suffer a preference to be obtained thereby, or, being insolvent, has suffered judgment to be entered against him, or has made a conveyance, gift, or transfer of his property, assets or rights, with intent to hinder, delay, or defraud his creditors, or has made an assignment for the benefit of his creditors, and upon due proof of the facts stated in such petition, said debtor shall be adjudged an insolvent. Involuntary insolvency is also adjudged for other causes mentioned in the statute. (See General Laws, Ch. 274.) Creditors' meetings shall be held, at which a majority in value of the claims shall constitute a quorum. Creditors may vote by proxy. If the creditors at their first meeting do not appoint assignees, or an assignee of the insolvent, the court may do so. Assignees shall give bond to the court. Proof of a claim may be made by a writing under oath, by a creditor, stating the nature and amount of his claim, the consideration therefor, the securities, if any, for it, and what payments, if any, have been made on account of the same. Dividends are declared on all allowed claims.

Interest. The legal rate of interest is 6 per cent, but any rate of interest agreed upon between the parties may be taken. Rates on judgments, notes, or open accounts, etc., is 6 per cent, unless a different rate be stipulated by the parties. Interest begins to run on accounts from the expiration of stipulated term of credit, or at a time fixed by usage of trade.

Judgments are not a lien on real estate. Foreign judgments are proved in accordance with act of Congress. There is no statute or rule of court on the subject.

Liens. Persons doing work for, or furnishing materials to be used in the construction, erection, or reparation of any building, canal, turnpike, railroad, or other improvement of the owner of the land on which same is situated, by contract with such owner, or with the husband of such owner with the consent of his wife in writing, has a lien thereon for such work and materials, subject to the encumbrances on land at time of the commencement of work or delivery of the materials. A sub-contractor has such lien, provided he gives written notice to the owner of the property affected thereby within thirty days after begining work, and sixty days after materials are placed upon the land, that he will claim such lien. (See General Laws, Ch. 206.)

Limitations of Suits. Accounts, six years; simple promissory notes, six years; sealed instruments and judgments, twenty years. An oral promise and partial payment revive the debt. No action can be brought against any executor or administrator *before* six months from the date of the first publication of the notice of the qualification of the first executor or administrator, and no such action shall be brought after the expiration of two years from the date of such publication.

Married Women. The property of a married woman is secured to her separate use, and is not liable for debts of her husband. She can transact business as a trader as though single and unmarried. Bond executed by her is legal and binding. She may make any contract whatsoever, the same as if she were single and unmarried, and with the same rights and liabilities. Property secured to her shall be liable to attachment and levy for her debts and liabilities under the same circumstances and with the same effect as if she had continued sole and unmarried. (*See Deeds.*)

Mortgages must be executed in the same manner as deeds, and recorded [see *ante*]. Foreclosure is usually enforced by sale under power in the mortgage, which in most cases enables the mortgagee to sell after prescribed notice thereof published in newspaper, after default. Mortgages may be discharged by release on the face of the record, or upon original mortgage deed, or by separate deed of discharge and release. Mortgages are usually given to secure promissory note of the mortgagor to the mortgagee's order, described in the mortgage.

Notes and Bills of Exchange are governed by the provisions of chap. 674 of the Public Laws, entitled "An Act Relating to Negotiable Instruments." Every negotiable instrument except sight drafts is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Legal holidays are the first day of January, the 22d day of February, the first Wednesday of April, the 30th day of May, the 4th day of July, the first Monday of September, the 25th day of December, and each of said days in every year, such day as the Governor of this State shall appoint as labor day in every year, the Tuesday next after the first Monday of November in the year 1896, and in every second year thereafter, or when either of the said days falls on the first day of the week, then the day following it, the first day of every week, and such other days as the Governor or General Assembly of this State, or the President, or the Congress of the United States, shall appoint as holidays for any purpose, days of thanksgiving, or days of solemn fast, and Saturdays after 12 o'clock M. Holidays (other than Sunday) falling on Sunday, are observed on Monday following. Indorsers of commercial paper are holden on notice from notary public, in accordance with the usages of commercial law.

Power of Attorney. The power of attorney of a married woman to convey her dower interest in any estate of husband during his lifetime shall be executed and acknowledged by her with the like formalities as are required in the execution and acknowledgment of a deed by a husband and wife of an estate held in the right of the wife.

Probate Law. (*See Administration of Decedent's Estate.*)

Proof of Claims. The proof of claims by affidavit is not required, except in insolvency. An affidavit drawn in compliance with the law as mentioned under title *Attachment*, or *Arrest*, should be sent with the claim when suit is to be brought. Claims must be filed with assignees within six months from the date of the published notice of the assignment. If disallowed the assignee gives notice in writing to creditor, who must sue within sixty days. Non-resident plaintiffs may always be required to give security for costs after a suit is entered in court, and other plaintiffs in the discretion of the court.

Protest. Notes, bills of exchange, and drafts are protested by notary public.

Replevin. Any personal estate may be replevied by the owner, unless he be defendant in a suit in which such property has been attached. Bond in double the value of the property replevied, with sufficient sureties, is required.

Revision. The last revision of the Rhode Island statutes went into effect February 1, 1896, and is termed "General Laws of Rhode Island, 1896."

Taxes are a lien on real estate, and lands may be sold for taxes delinquent after due notice given. Owner, or his heirs or assigns, may redeem within one year by paying purchase money with 20 per cent in addition.

Trust Deeds are executed the same as other deeds. They are in common use, but not usual, as security for loans, the mortgage deed with power of sale being more effectual.

Wills. All wills of lands, tenements, and hereditaments, and bequests of personal estate, shall be in writing and signed by the party devising and bequeathing the same, or by some person in his presence and by his express direction; and shall be attested and subscribed in his presence by at least two witnesses, or else shall be void and of no effect. No form of proof is required, but the subscribing witnesses should appear at probate of the will, if living in the State. Non-residents may be executors of wills. Every person being upwards of eighteen years of age may dispose of personal estate and every person of twenty-one years or above may dispose of real estate by last will and testament. The will of a married woman shall not impair the rights of her husband upon her death, as tenant by the curtesy. Wills are recorded in the town clerk's office of the town where the testator lived. [Gen. Statutes, Ch. 202.]

SYNOPSIS OF THE LAWS OF SOUTH CAROLINA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. MORDECAI & GADSDEN, Attorneys at Law, Charleston. (*See Card in Attorneys' List.*)

Accounts and Claims. Accounts should be itemized and contain a statement of all payments and credits. Full names of creditors and residence should be sent. If partnership, firm name and full name of each partner. If corporation, its name and under the laws of what State incorporated. Claims should be verified by a member of the firm or officer of the corporation before a notary public having a seal, or a commissioner of deeds for South Carolina.

Acknowledgments. All deeds for the conveyance of real estate must be signed and sealed by the grantor in the presence of two witnesses, and recorded within the county in which the land lies, within forty days from the time of delivery or execution. Before any deed or other instrument in writing can be recorded in the proper office within the State, the execution thereof shall first be proved by the affidavit, in writing, of a subscribing witness to such instrument, taken before some officer within the State competent to administer an oath, or before a commissioner or commissioners appointed by dedimus, issued from the court of common pleas of the county in which the instrument is to be recorded; or, if taken without the limits of the State, and within the United States, before a commissioner of deeds of the State, or before a clerk of a court of record, who shall certify the same under his official seal, or before a notary public, who shall affix thereto his official seal, and accompany the same with a certificate as to his official character from a clerk of a court of record of the county in which the affidavit is taken; or, if taken without the United States, before a consul or vice-consul or consular agent of the United States of America. All verifications of pleadings, affidavits, and proofs of claims made before notaries public in other States have the same force and effect as if sworn to before a commissioner of deeds, provided notary shall use his official seal.

Actions. Suits in the court of common pleas are begun by issuing a summons and filing complaint. The complaint must be signed by the party or his attorney, and may or may not be verified. All distinctions between actions at law and suits in equity have been abolished.

Administration of Estates. Letters testamentary are granted after the probate of any last will and testament in due form of law, by and before the proper judge of probate. The filing of a bond by executors is not required. In case any person die intestate, the judge of probate of the county where such person was last a resident and died shall grant administration of the goods, chattels, rights, credits of such person deceased to his or her relations in the order following: 1. To the husband or wife of the deceased. 2. The children or their legal representatives. 3. In default of them, then to the father or mother of the deceased. 4. To the brothers or sisters. 5. In default of them, to such of the next of kindred of the deceased, at the discretion of the judge of probate, as shall be entitled to a distributive share of the intestate estate. 6. Next to the largest creditor or such other person as the court shall appoint.

Affidavits. All affidavits should be made before a commissioner of deeds for South Carolina, or before a notary public having an official seal. The affidavit used for the purpose of proving the execution of deeds when taken without the limits of this State, but within the United States, must be made before a commissioner of deeds for this State, or before the clerk of a court of record, who must use his official seal, or before a notary public, who must also use his official seal, and whose official character, signature, and seal must be certified to by the certificate of the clerk of a court of record of the county in which the affidavit is made. If taken without the United States it must be made before a consul, vice-consul, or consular agent of the United States.

Aliens. No alien person, either in his own right in severalty, or as tenant in common, in fee or for a term of years, or as trustee, cestui qui trust, or agent, shall own or control within the limits of this State more than five hundred acres of land, provided this section does not apply to land purchased under proceedings to foreclose mortgage held by foreign corporations purchasing the same, but in such case such foreign corporation shall not be entitled to hold said excess of land more than five years without sale of the same, unless the comptroller-general shall certify that a sale during that time would be detrimental to the interest of such corporation, in which case said land may be held for five years longer upon same conditions. This article does not apply to lands already owned or controlled by the persons or corporations referred to in this article, nor to lands already mortgaged to such persons or corporations.

Appeals. The supreme court shall have exclusive jurisdiction to review upon appeal; any intermediate judgment, order, or decree involving the merits in actions commenced in the court of common pleas and general sessions brought there by original process, or removed there from any inferior court or jurisdiction, and final judgment in such actions. An order affecting a substantial right made in an action when such order in effect determines the action and prevents a judgment from which an appeal might be taken. Whenever an appeal is taken to the supreme court the appellant or his attorney shall, within ten days from the order or judgment appealed from, give notice of intention to appeal to the opposite party or his attorney.

Arbitration. Any and all persons in cases of disagreement may propose to leave their differences to arbitration, each party to enter into bond in double the amount involved to faithfully abide the result of such arbitration. One arbitrator is selected by each party and the two so selected to choose the third. Each of the arbitrators shall take an oath to render a verdict according to the law and the evidence. The finding of the board of arbitrators is final, except that either party shall have the right to appeal to the circuit court, upon which appeal the circuit court shall hear the case without the intervention of a jury. The award of the arbitrators must be filed with the clerk of the court of common pleas within five days after the finding and when so filed becomes a judgment of the court for such county. Arbitrators have power to subpoena witnesses and send for papers with same powers and penalties as now apply to the magistrate's court.

Arrest. A defendant may be arrested when he has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought; to recover damages for fraud or deceit; when the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; also when defendant as a public officer, officer of a corporation, attorney, factor, broker, agent, or other person in a fiduciary character fraudulently misapplies or embezzles money or property. The order for arrest must be obtained from a judge, trial justice, or clerk of court in which or before whom the action is brought. The judge or other officer must require a written undertaking with or without sureties in a sum not less than $100, to the effect that if the defendant recover a judgment, the plaintiff will pay all costs and damages if the arrest be wrongful.

Assignments and Insolvency. An embarrassed debtor may assign his property for the benefit of creditors, who have the right to appoint an agent or agents equal to the number of assignees. Where none are appointed, assignee can act alone and must report to creditors every three months. The compensation of assignee and agent is 5 per cent for receiving, and 2½ per cent for paying out money. The assignment of all his property by a debtor under arrest effects his discharge from such arrest. Only the claims of creditors participating in dividends are affected by these assignments, and then only as to creditors who by the term of deed are required to release. The debtor, however, can make no preferences or priorities other than as to debts due the public and to such creditors as shall release under the assignment, and all transactions within ninety days before assignment, with a view to give fraudulent preference to any creditor or creditors, are null and void.

Attachments will issue in an action arising on contract for the recovery of money, or in an action for the wrongful conversion of personal property, or for the recovery of property, whether real or personal, and damages for the wrongful conversion and detention of personal property or in an action for injury done to either person or property, or against a corporation created by or under the laws of any other State, government or country, or against a debtor who has absconded or concealed himself, or whenever any person or corporation is about to remove any of his or

its property from the State, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete any of his or its property, with intent to defraud creditors; the creditor, at the time of issuing the summons, or at any time thereafter, may have the property of such debtor or corporation attached as a security for the satisfaction of such judgment as the creditor may recover. Proceedings in case of attachment are prescribed by the code.

Banks. SEC. 1539a. The total liabilities to any such bank of any person other than a director or officer thereof, or of any company, corporation, or firm, for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of any such bank actually paid in and its surplus, except by a two-thirds vote of the directors of the bank; but the discount of bills of exchange drawn in good faith against actual existing values and the discount of commercial or business papers shall not be considered as money borrowed.

SEC. 1540. No director or other officer of any such bank shall borrow therefrom, except on good security, to be approved in writing by two-thirds of the whole board of directors of such bank, and no director or other officer of any such bank shall become an endorser or surety upon any loan or credit made or extended to any other director or officer of such bank: *Provided*, That the total liabilities to any such bank of any director, or of any firm of which such director is a member, or any company or corporation of which such director is an officer, shall at no time exceed one-tenth part of the amount of the capital stock of any such bank actually paid in. If any director or other officer of any such bank shall be convicted upon indictment of directly or indirectly violating any of the provisions of this section, and of the said section 1539a, he shall be punished by fine or imprisonment, or by both fine and imprisonment, at the discretion of the court.

The books, papers, and accounts of all banks shall be opened to inspection, under such regulations as may be prescribed by law. Revised Statutes, Vol. 1, Section 605, says: "The comptroller-general shall collate the various statements in the monthly returns made to him by the banks, so as to present a comparative view of all the items thereof, and shall publish the same in some public newspaper, for general information. Every bank failing to make such returns shall forfeit to the use of the State, to be recovered by the comptroller by action, $25 for each and every day's neglect." Section 606 provides: "The comptroller-general shall, at least once in every month, collect the accounts of the weekly state of their circulation and specie, rendered by the several banks of issue, in conformity with law, and publish the same, so collected, in some newspaper. And any bank, the officers whereof shall neglect to transmit to the comptroller-general any such account aforesaid, shall forfeit $100 for each and every day during which the same shall be neglected, to be recovered by action at the suit of the State." Section 607: "It shall be the duty of the comptroller-general, whenever it appears that any bank, or any officer of a bank, has incurred any forfeiture for any official misconduct, to cause suit to be brought against such bank or officer, by the attorney general or the solicitor of the circuit in which such bank is situated, for the recovery of the same. And in case he shall, at any time, have cause to suspect that a false or incorrect account has been rendered to him by any bank, he shall have authority, and it shall be his duty, to make a personal examination of the books of such bank, in order to ascertain the truth; and any officer of a bank who shall refuse to submit the books of said bank to the comptroller-general for such examination, shall be deemed guilty of a misdemeanor, and be subject to fine and imprisonment, at the discretion of the court." There are no laws restricting savings banks incorporated by the State as to the class of bonds or securities in which they may make investments. No irregularity in complying with the provisions of the general incorporating act shall be held to vitiate any charter until proceedings to set aside and annul the charter shall be instituted by the State, and all acts done and contracts entered into shall have the same force and effect as if said irregularity had not existed.

SECTION 1455. The president, directors, and company of any incorporated bank in this State are authorized to make loans on negotiable paper for any period not exceeding twelve months; and also to open an account and give a credit to any other bank or banks in any of the sister States.

SEC. 1456. Such corporations shall have the power to vest, from time to time, such part of their capital, not exceeding (with the amount of stock any such bank may hold) one-half of the amount originally subscribed to such bank, in the stock of this State or United States.

SEC. 1457. If the bank notes issued by any bank, and in circulation, shall at any time exceed, for more than four successive weeks, three times the amount of gold and silver coin and bullion in possession of the bank, or subject to its control, within the limits of this State, as its own property, such bank shall forfeit $500 for each and every successive week during which such excess shall continue, to be recovered by action at the suit of the State.

SEC. 1458. In order that such excess, when it exists, may be apparent, it shall be the duty of the president or cashier of every bank of issue, on Wednesday of every week, to transmit to the comptroller-general an account of the amount of bank notes of such bank in circulation; and also an account of the amount of gold and silver coin and bullion in the possession of the bank, or subject to its control as its own property, on the next preceding Tuesday, which account shall be certified by the oath of the president or cashier, taken before and certified by any officer duly authorized to administer oaths.

SEC. 1459. Any bank the officers whereof shall neglect to transmit to the comptroller-general any such account aforesaid shall forfeit $100 for each and every day during which the same shall be neglected, to be recovered by action at the suit of the State.

SEC. 1460. It shall be felony for any president, director, manager, or cashier, or other officer of any banking institution, to receive any deposits or trusts or to create any debts for such corporation after he shall become aware that such corporation is insolvent; and every officer of such failing corporation shall become personally liable to the amount of such deposits or trusts received by him, or with his knowledge or assent, in any such case, to the person thereby damaged, whether criminal prosecution be made or not.

SEC. 1461. No bank now or hereafter to be incorporated in this State shall be compelled by law to pay any of their bills which have been, or may be hereafter, cut in half or divided, unless both halves of said bill or bills are presented, or unless the person producing one half and demanding payment as of the whole shall first give bond and sufficient security to the said bank as an indemnity against any loss or damage that may be sustained by the said bank by paying the whole of said half bills to said person.

SEC. 1462. The words "bank note" shall be understood to include all bills, notes, checks, and other obligations of any bank made payable to bearer on demand, or in any form of words whatsoever, written, printed, or engraved, so as to be circulated and used as paper money or currency; and the words "bank of issue" shall be understood to include every bank having lawful authority to issue its own bank notes.

SEC. 1464. All institutions doing business in this State in lending money and receiving deposits under acts of incorporation granted by the State are hereby required, under penalty of a forfeiture of their charters, to publish in a newspaper in the city, town, or village where they or any branch thereof may do business, at the end of every three months, a correct report of the condition and business of such institution, which report shall contain a statement under oath, by the president or cashier of such institution, of the amount of capital stock paid in, deposits, discounts, property, and liabilities of said institution, verified by three of the directors thereof. Upon failure of any such institution to publish such report, the attorney-general, on notice thereof, shall at once take the necessary steps to vacate the charter of said institution.

How incorporated under General Laws. Under the act of 1896 there is no distinction in the incorporation of banks from the incorporation of any other corporation. All corporations are organized under a general law. (*See Corporations.*)

Bills and Notes. (*See Notes and Bills of Exchange.*)

Bills of Lading. The usual principles of mercantile law are applicable to bills of lading in this State.

Chattel Mortgages. The law in regard to chattel mortgages provides that in case the condition is broken the mortgagee appoints an agent with authority to foreclose, who immediately takes possession of the property and advertises the same for sale at a given date. Mortgagor has right to redeem property at any time before sale by paying debt and all costs. Chattel mortgages must be recorded within forty days in order to take effect from the day of their execution, but if recorded after such time they take effect as to third parties without notice only from the date of the record.

Claim Delivery. The plaintiff in an action to recover the possession of personal property may at the time of issuing the summons or at any time before answer claim the immediate delivery of such property by making the necessary affidavit and executing bond in double the value of the property, and defendant may require redelivery of property by executing a like bond.

Collaterals. Collateral loans are allowed in this State, and collateral notes are commonly used.

Contracts. Every agreement whereby the vendor or bailor reserves any interest in personal property, must be recorded in the same manner as mortgages. This is not applicable to livery-stable keepers and inn keepers.

Conveyances. All conveyances of real estate must be signed and sealed by the grantor in the presence of two subscribing witnesses and recorded within forty days. If recorded after forty days then they take effect as to third parties only from the date of record. If the grantor be married his wife must renounce her dower in a peculiar form prescribed by statute.

Corporations. Two or more persons desiring to form themselves into a corporation for any purpose whatsoever except railroad, railway, tramway, turnpike and canal corporations, and except also for municipal purposes, or one or more combined of any character whatsoever, may file with the secretary of State a written declaration, signed by themselves, setting forth: First, the name and residences of the petitioners; Second, name of the proposed corporation; Third, place at which it proposes to have its principal place of business; Fourth, the general nature of the business which it proposes to do; Fifth, the amount of capital stock; Sixth, the number of shares into which it is to be divided, stating the par value of each share; Seventh, any other matter which it may be desirable to set forth. Upon the filing of the petition as above, and the payment of a fee of three dollars for recording of said petition, the secretary of State shall issue to the parties a commission constituting them a board of corporators and giving them authority to open books of subscription after public notice not exceeding ten days. A corporation can not be organized until 50 per cent of the proposed capital stock has been subscribed. Upon the completion of the organization and payment to the treasurer of the corporation of at least 20 per cent of the aggregate amount of the capital subscribed, the board of corporators or a majority of them shall, over their signatures, certify to the secretary of State that the requirements of this act have been complied with. The board of corporators on making their return shall pay to the secretary of State a charter fee graded as follows: $5.00 for capital stock of $5,000 or less; $10.00 for more than $5,000 up to and including $25,000; $15.00 for more than $25,000 up to and including $50,000; $20.00 for more than $50,000 up to and including $100,000; $25.00 for more than $100,000 up to and including $250,000, and one dollar additional for each ten thousand dollars increase or fraction thereof above $250,000. Upon the filing of return and the receipt of the recording fee of three dollars and the charter fee hereinbefore specified, the secretary of State shall issue to the board of corporators a certificate to be known as the charter, which must be recorded in the office of the register of mesne conveyance of each county where such corporation shall have a business office. Provided, that in cases when by the terms of the declaration the capital stock is to be paid in in installments, the charter may be issued when 50 per cent of the first installment has been paid in and the provisions of this are in other respects complied with. There is no stock liability in corporations organized under the constitution of 1895 and the act of 1896 except in the case of banking corporations which has already been stated. The legislature is prohibited from passing any special charter for banking corporations, and all corporations must be organized under this act, except those enumerated above. As to dissolution of corporations, see A. A., 1898; page 771.

Courts. *Terms and Jurisdiction.* Courts of common pleas are held three times a year in each county, and have jurisdiction in all civil cases not cognizable by the trial justices. There is a probate court in each county, holding monthly sessions and possessing the usual powers. Magistrate's jurisdiction, $100. Actions to be tried in the county where land lies or in which the defendant resides.

Days of Grace. Days of grace are allowed in this State on all paper not payable on demand.

Deeds of Trust. Deeds of trust are sometimes used within this State, but the usual form is by way of mortgage, whether the same concerns either real or personal property, and a deed of trust for the purpose of securing a creditor would be construed by the courts to be a mortgage.

Depositions. Testimony of any witness may be taken in any civil action depending in the court of common pleas for any county in this State, by deposition de bene esse—when the witness lives without the county in which such cause is to be tried, or more than 100 miles from the place of trial, or is bound on a voyage to sea, or is about to go out of the State or county in which the cause is to be tried, or when he is aged or infirm. The deposition may be taken before any circuit judge of this State, or any of the circuit courts, or any trial justice, notary public, chancellor, judge or justice of the supreme court, or chief magistrate of a city in any of the United States. Notice not less than ten days must be given to the opposite party, stating the time, place, and name of witness.

Descent and Distribution of Intestate's Property. Property of person dying intestate shall be distributed as follows: Leaving a widow and children, one-third to the widow, remainder to the children; when he leaves no child, but a widow, father or mother, brother or sister of the whole blood, the widow is entitled to one moiety, and the other moiety goes to father, mother, brother or sister, children of a deceased brother or sister to represent parents; to take the share they would have been entitled to if living. When the intestate leaves no child or other lineal descendant, father, mother, brother or sister of the whole blood, but leaves a widow and brothers and sisters of the half blood and a child of a brother or sister of the whole blood, the widow takes one moiety and the other moiety is equally divided between the brothers and sisters of the half blood and the children of the brothers and sisters of the whole blood. If intestate leaves no child or lineal descendant, father, brother, mother or sister, the widow takes one moiety and the lineal ancestor the other. If intestate leaves no child or lineal descendants, father, mother, brother or lineal ancestor, the widow takes two-thirds of the estate and remainder goes to next of kin.

Divorce. Article 17, section 3, of the constitution provides, divorces from the bonds of matrimony shall not be allowed in this State.

Dower. Widow is entitled to one-third, for life, of the lands which her deceased husband was seized in fee at any time during their marriage.

Examination of Banking and other Fiscal Corporations. The office of State bank examiner is created. The examiner to enter upon his duties on the first day of July, 1896, and hold office for two years. He is appointed by an advisory board consisting of the governor, comptroller-general, secretary of State, State treasurer, and attorney-general. It shall be his duty to examine fully and carefully, at least once a year, and oftener if his time permits, into the books, papers and affairs of every banking or fiscal corporation of this State, and report to the State treasurer on oath the result of such examination, setting forth specifically all violations, if any, of the banking law of this State. Such report shall be filed in the State treasurer's office for inspection of all persons interested. It is his duty upon the discovery of any violation of the banking laws to which a penalty is attached to report the same to the attorney-general, with instructions to enforce such penalty by proper proceedings. Any officer or employe of such corporations who shall obstruct said examiner in the discharge of his duties shall, on conviction, be guilty of misdemeanor. The State bank examiner is required to give bond in the sum of ten thousand dollars and receive the salary of fifteen hundred dollars, exclusive of his actual railroad fare. The salary of the State bank examiner and the expenses attached to his office shall be paid by a special levy on the capital of the banking or fiscal corporations of this State. The said levy to be fixed by the advisory board hereinbefore provided for. No inspector.

Executions may issue five days after the adjournment of each court, and are returnable within sixty days. Stay is only granted on appeal given. Executions may issue at any time within ten years from date of judgment. The clerk shall not, without special leave of the court, enter any judgment until the expiration of five days after the court has adjourned for the term.

Fidelity and Surety Bonds. Fidelity and surety companies are accepted as surety on all bonds of every description in this State, including stipulations and other bonds required in judicial proceedings, provided such foreign surety companies comply with the law governing foreign insurance companies.

Fire Insurance Companies are required in case of total loss to pay the full amount of insurance provided for in the policy, and a proportionate amount in case of partial loss. No statement in the application shall be held to prevent a recovery before a jury in case of partial or total loss, and after the expiration of sixty days the insurer is estopped to deny the truth of the statement in the application except for fraud.

Foreign Building and Loan Associations. Mortgages on lands in this State are subject to usury laws of this State. No greater rate than 8 per cent can be charged.

Foreign Corporations. All foreign corporations within sixty days from acquiring property or commencing business in this State, are required to file in the office of the secretary of State a written declaration designating some place within the State as principal place of business, at which all legal papers can be served, and also some authorized agent within the State upon whom process can be served to bind the corporation. A number of other requirements exist concerning the filing with the secretary of State of copies of the charter and by-laws and other matters of detail. The act is very mandatory in its provisions, and a fine of five hundred dollars is imposed for non-compliance.

Foreign Insurance Companies, in addition to the license fee of $100 now provided by law, are required to pay quarterly to State treasurer an amount equal to one-half of 1 per cent, on gross premiums, gross income, or gross receipts. A penalty is provided for failure to comply with the act.

Fraud. The statute of frauds and perjuries commonly known as "the Statute of Elizabeth" is of force in this State.

Holidays. National thanksgiving days and all general election days, the 1st day of January, the 19th of January, the 22d of February, 4th of July, 25th of December, first Monday in September, the 10th of May, and the 3d day of June of each year shall be legal holiday. In Charleston every Saturday from 12 noon to 12 midnight is a legal half-holiday so far as regards commercial paper.

Homestead. Article 3, section 28, of the constitution, which was ratified December 4, 1895, and an act passed carrying it into effect provides: The general assembly shall enact such laws as will exempt from attachment, levy and sale under any mesne or final process issued from any court to the head of any family residing in this State, a homestead in lands, whether held in fee or any lesser estate, to the value of one thousand dollars, or so much thereof as the property is worth if its value is less than one thousand dollars, with the yearly products thereof, and to every head of a family residing in this State, whether entitled to a homestead exemption in lands or not, personal property to the value of five hundred dollars, or so much thereof as the property is worth if its value is less than five hundred dollars. The title to the homestead to be set off and assigned shall be absolute and be forever discharged from all debts of the said debtor then existing or thereafter contracted, except as hereinafter provided. Provided, that in case any woman having a separate estate shall be married to the head of a family, who has not of his own sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be entitled to a like exemption as provided for the head of a family: Provided, further, that there shall not be an allowance of more than $1,000 worth of real estate and more than $500 worth of personal property to the husband and wife jointly, Provided, further, that no property shall be exempt from attachment, levy, or sale for taxes, or for payment of obligations contracted for the purchase of said homestead, or personal property exemption: or the erection or making of improvements or repairs thereon: Provided, further, that the yearly products of said homestead shall not be exempt from attachment, levy or sale for the payment of obligations contracted in the production of the same: Provided, further, that no waiver shall defeat the right of homestead before assignment, except it be by deed of conveyance or by mortgage, and only as against the mortgage debt; and no judgment creditor, or other creditor whose lien does not bind the homestead, shall have any right or equity to require that a lien which embraces the homestead and other property shall first exhaust the homestead: Provided, further, that after a homestead in lands has been set off and recorded, the same shall not be waived by deed of conveyance, mortgage or otherwise, unless the same be executed by both husband and wife, if both be living: Provided, further, that any person not the head of a family shall be entitled to a like exemption as provided for the head of a family in all necessary wearing apparel and tools and implements of trade, not to exceed in value the sum of $300.

Husband and Wife. (*See Married Women.*)

Interest. No greater rate of interest than 7 per cent per annum can be charged upon any contract arising in the State, except upon written contracts, wherein, by express agreement, a rate of interest not exceeding 8 per cent may be charged. Any person or corporation receiving a greater rate of interest than 8 per cent shall not only forfeit the interest, but also double the sum so usuriously received, to be collected by a separate action or allowed as a counter-claim to any action brought to recover the principal. By Act of 1898 the borrower, his heirs, devisees, legatees, personal representative, or any creditor can plead the benefit of this statute.

Judgments are a lien on lands within the county for ten years from the time of entry, which lien may be extended to other counties by filing transcript, and may be renewed within said ten years so as to extend lien for ten years more.

Liens. Special liens are created by statute. There is a landlord's lien for his rent, the lien for agricultural advances, the mechanic's lien on buildings, the special statutory lien given both to the State, county, and certain of the cities for taxes. All employes in factories, mines, mills, distilleries, and all other manufacturing establishments, have a lien by statute upon all the output of such manufacturing establishments to the extent of their salary or wages, such lien to take precedence over all other liens except for taxes.

Limitations of Suits. Upon contracts not under seal, sealed notes or personal bonds, six years; judgments or decrees of any court, and upon sealed instruments (except as above), twenty years; to recover real property, ten years; actions for libel, slander, assault, battery, or false imprisonment, and actions upon a statute for a forfeiture or penalty to the State, two years.

Married Women. Article 17, section 9, of the constitution provides the real and personal property of a woman held at the time of her marriage, or that which she may thereafter acquire, whether by gift, grant, inheritance, device or otherwise, shall be her separate property, and she shall have the rights incident to the same to which an unmarried woman or a man is entitled. She shall have the power to contract and be contracted with in the same manner as if she were unmarried.

Mortgages. All mortgages, whether of real estate or chattels, must be recorded within forty days. Mortgages of realty are foreclosed by ordinary suit of complaint and summons, and chattel mortgages are enforced by mortgagee taking possession of the goods and selling them. Different books must be provided by clerks and registers of mesne conveyances of the several counties, for the recording of chattel mortgages and mortgages on real estate. Renunciation of dower by a married minor valid. Chattel mortgages after breach of condition and before sale may be discharged by payment or tender of payment.

Lands can not be sold under power contained in mortgage unless the mortgagor agrees in writing on the face of the mortgage to the amount due thereupon within twelve months.

Notes and Bills of Exchange. Bills of exchange and promissory notes, drawn in the usual form, are recognized as commercial paper. There is no law requiring the payment of commercial paper at a bank or other fixed place in the State. If drawn payable at sight are entitled to days of grace. No protest is needed on an inland bill for less than $100. On all bills of exchange drawn on persons resident within the United States, and without this State, and returned protested, the damages on such protested bill shall be 10 per cent on the sum drawn for. On all bills drawn on persons resident in any other part of North America or in the West India Islands, and protested, the damages shall be 12½ per cent. On all bills drawn on persons in any other part of the world, and protested, the damages shall be 15 per cent. Paper falling due on Sunday or legal holiday to be paid the next day thereafter. (*See Holidays.*)

Powers of Attorney. Powers of attorney to be effective in this State, if executed within the State, must be witnessed by at least one witness, and acknowledged before some officer qualified to administer an oath. If without the State, they must be witnessed by a commissioner of deeds of this State, or before a notary public having a seal of office whose official character is certified to by the clerk of a court of record, or before a clerk of a court of record with seal attached, the fact that he is the clerk of the court of record appearing on the certificate.

Probate Law. (*See Wills.*)

Protest. (*See Notes and Bills.*)

Stockholders' Liability. Article 9, section 18, of State constitution provides that stockholders in banks or banking institutions shall be liable to depositors therein in a sum equal in amount to their stock over and above the face value of the same.

Suits. All distinctions between actions at law and suits in equity have been abolished, and the code of procedure is almost identical with that of New York. Actions relating to real property or for the recovery of specific personal property are brought within the county where the land or property is situated. In all other cases in the county of the defendant's residence; and, if he resides out of the State, then in any county.

Taxes for State purposes are a lien from January 1st of each year, and payable by 31st December of the following year. Immediately upon the expiration of the time allowed by law for the payment of taxes in any year, the county treasurer of each county shall issue in the name of the State an execution against each defaulting taxpayer in his county, under which sufficient personal or real property shall be sold to pay said taxes, the sheriff's deed under such sale shall be prima facie evidence of good title in the purchaser. No action for the recovery of land so sold shall be maintained unless brought within two years from date of said sale. All lands not sold are forfeited to the State. The tax is in all cases a first lien as against the estates of all deceased persons; of bankrupts and insolvents; of all persons making assignments for the benefit of creditors; as against all trust estates; as against all personalty had on chattel mortgage or pledge; as against all personal property held in fraud of creditors; and as against all stocks in trade, etc., of mer-

chants and manufacturers. Property must be listed for taxation between January 1st and February 20th of each year.

Transfer of Corporation Stocks. No transfers of the stocks of a corporation are effective, except as between the parties, until the same shall have been actually transferred on the books of the corporation by the stockholder in person or by the attorney. It is, however, customary for stocks to be transferred in blank and used for the purposes of collateral, notwithstanding the provisions of the statute above referred to.

Wills. All wills of real and personal property must be signed by the testator or some one for him in his presence and by his express request, and be attested and subscribed in the presence of the testator and of each other by three or more credible witnesses. Exemplifications of wills regularly proved in foreign courts may be admitted to probate on certificate of judge of such court.

SYNOPSIS OF THE LAWS OF SOUTH DAKOTA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. BAILEY & VOORHEES, Attorneys at Law, Sioux Falls. (*See Card in Attorneys' List.*)

Accounts. The items of an account need not be set forth in the pleading; within ten days after written demand therefor an itemized statement of account verified if the pleading is verified must be served.

Acknowledgments of deeds or instruments within the State may be made before a justice, clerk of the supreme court, or notary public, and within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before the judge or clerk of any court of record, mayor, justice of the peace, register of deeds, U. S. circuit or district court commissioner, a county clerk or county auditor. If without the State, before any judge or clerk of a court of record of the United States, or any State or Territory, notary public or any other officer of the State or Territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment, or commissioner of deeds appointed by the governor of this State. In foreign countries, before a minister, commissioner, diplomatic or consular agent of the United States, or a judge or notary public of said country. Letters patent from the United States and final receiver's receipts from the United States land offices may be recorded without acknowledgment or further proof. Certificates of acknowledgment must be substantially in the following form:

State of..... } ss.
County of..... }

On this....day of....., in the year....., before me personally appeared....., known to me (or, proved to me on the oath of.....) to be the person.. who is (are) described in, and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

(Signature and title.)

Acknowledgment of corporation must be substantially in the following form:

State of..... } ss.
County of..... }

On this....day of....., in the year....., before me (here insert the name and quality of the officer), personally appeared... ....., president (or secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same. (Signature and title.)

Acknowledgment by an attorney in fact must be substantially in the following form:

State of..... ..... } ss.
County of..... }

On this....day of....., in the year....., before me (here insert the name and quality of the officer), personally appeared....., known to me (or proved to me on the oath of.....,) to be the person who is described in, and whose name is subscribed to the within instrument as the attorney in fact of..... and acknowledged to me that he subscribed the name of.....thereto as principal, and his own name as attorney in fact. (Signature and title.)

Actions. All distinctions between action at law and suits in equity, and the forms of such action and suits, are abolished. There is but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which is denominated a civil action. The civil action is commenced by the service of the summons, and must be prosecuted in the name of the real party in interest, except that an executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him his cestui que trust. Defendant must appear, or, if the complaint is served with the summons, must plead in courts of record within thirty days after the service. In courts of justices of the peace the return day is designated and must be not less than three, nor more than twelve days after summons issued. Actions relating to real estate must be brought in the county where the real estate or some part thereof, is situated. Other actions may be brought in any county subject to the right of the defendant to demand a removal to the county where he resides. Infants must appear in actions by guardians who are appointed by the court in which the action is pending. The non-resident plaintiff must give security for costs upon order of the court granted upon the demand of the defendant.

Administration of Estates. Letters of administration of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned in the following order: The surviving husband or wife, or some person whom he or she may request to have appointed. The children, father or mother, in case the father be dead, brothers, sisters, grandchildren, next of kin, creditors, and any person legally competent. If the decedent was a member of a partnership his surviving partner is not competent. A married woman is not competent to be appointed administratrix, and when an unmarried woman, who has been appointed administratrix, marries, her authority is extinguished. An administrator must give bond in twice the value of the personal property belonging to estate, with sureties, and when the real estate is ordered sold must give additional bond to be fixed by the court. Administrators must make and return to the court within thirty days, a true inventory and appraisement of all the estate. The homestead, absolute exemption, and property exempt from execution, must be set apart to the family of decedent, and s not liable for any prior debts, except necessary expenses of last illness, funeral charges, and expenses of administration. The administrator must immediately cause notice to creditors to be published for four weeks to creditors to present claims. The time to present claims is limited to four months in all estates under $5,000; to six months to estates over that sum. Claims not presented within that time are barred unless the claim is not due, but must be presented within one month after maturity. If claimant be non-resident and show by affidavit that he has had no notice by reason of such non-residence, he may, by order of the court, be allowed to present his claim. Every claim must be supported by the affidavit to claimant, or some one in his behalf, that the amount is justly due, that there are no offsets. The administrator must allow or reject the claim within ten days. Suit can not be brought on claim before its presentation to administrator. After claim is rejected suit must be brought within three months. The debts of the estate must be paid in the following order: Funeral expenses; expenses of the last sickness; debts having preference by the laws of the United States; judgments rendered against the decedent in his lifetime; and mortgages in the order of their date and all other demands against the estate. The preference given mortgages is confined to the property mortgaged. The deficiency is classed with other demands against the estate. If personal property is insufficient to pay claims, real estate may be sold.

Affidavits. An affidavit may be made in and out of this State before anyone authorized to administer an oath, and must be authenticated in the same way.

Aliens. Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this State.

Appeals. Appeals may be taken from justice court to the circuit or county court within thirty days; from judgment, decree, or order of the county court, when exercising probate jurisdiction, to the circuit court, in ten days when person against whom the adverse decision was given was present at the hearing, and within thirty days if he was absent, from a judgment of the circuit or county court to the supreme court within two years; and from an order of the circuit or county court within sixty days.

Arbitration. There is no provision in the code for arbitration. An agreement to submit a controversy to arbitration can not be specifically enforced.

Arrest. The defendant may be arrested in civil actions in the following cases: In an action for the recovery of damages, or a cause of action not arising out of contract where the defendant is not a resident of the State or is about to remove therefrom, or where the action is for an injury to the person or character, or for injuring, or for wrongfully taking, detaining, or converting property, in an action for a fine or penalty, or on a promise to marry, or for money received, or for property embezzeled or fraudulently misapplied by a public officer, or by an attorney, or by an officer or agent of a corporation or banking association, or by any factor, agent, broker, or other person in a fiduciary capacity. In an action to recover the possession of personal property unjustly detained, where the property or any part thereof has been concealed, removed, or disposed of with intent to deprive the parties of the benefit thereof; when the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detaining, or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit; when the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; but no female can be arrested in any action, except for willful injury to person, character or property. The order for the arrest is obtained from the judge of the court in which the action is brought, and is procured upon the affidavit of the plaintiff, or some other person, that sufficient cause of action exists. The affidavit must be either positive or upon information and belief; and when upon information and belief it must state the facts upon which the information and belief are founded. A written undertaking on the part of the plaintiff must be given in a sum to be fixed by the judge, which in no case must be less than $100.

Assignments and Insolvency. An insolvent debtor may, in good faith, execute an assignment of property in trust toward the satisfaction of his creditors without preference or priority from any other creditor. A debtor is insolvent when he is unable to pay his debts from his own means as they become due. An assignment is void against any creditor of the assignor not consenting thereto in the following cases: If it tend to coerce any creditor to release or compromise his demands; if it provides for the payment of any claim that is fraudulent or for the payment of more upon any claim than is justly due from the assignor; if it reserves any interest in the assigned property to the assignor, or for his benefit, before all his existing debts are paid, other than property exempt by law from execution; if it confers upon assignee any power which, if exercised might prevent or delay the immediate conversion of the assigned property to the purposes of the trust; if it exempt him from liability for neglect of duty or misconduct. The assignment must be in writing, subscribed by the assignor, or by his agent thereto, authorized in writing. It must be acknowledged, or proved and certified, and recorded in the office of the register of deeds of the county in which the assignor resides, or, if the assignor is a non-resident in which his principal place of business is situated, or the principal part of the property covered by the assignment is located. An inventory is not required to be filed with the assignment, but within twenty days a full and true inventory must be made and filed, showing all the creditors of the assignor, the place of residence of each creditor, the sum owing to each creditor, and nature of each debt and liability, the true consideration of the liability in each case, and the place where it arose, every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor, all property of the assignor at the date of the assignment which is exempt by law, and all the assignor's property at the date of the assignment, both real and personal, and the incumbrances existing thereon, and the value of such property. An affidavit must be made by every person executing an assignment and annexed to, and filed with the inventory to the effect that the same is just and true, according to the best knowledge and belief of such assignor. Within thirty days after the date of the assignment the assignee must enter into a bond to the State in double the amount of the value of the property assigned, with sufficient sureties to be approved by the judge of the circuit court, which bond must be filed with the inventory. Property exempt from execution and insurances upon the life of the assignor do not pass by the assignment unless they are specially mentioned and the assignment declares an intention that they shall pass thereby. An assignment duly executed and recorded can not be canceled or modified without the consent of every creditor affected thereby.

Attachment process issues at the time of issuing the summons or at any time afterward in all actions against a foreign corporation which has not complied with the laws of this State relative to the appointment of agents upon whom service of process may be made (*see Corporations, Foreign, post*), or non-resident defendant, or when defendant has absconded or concealed himself, or whenever any person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of, or secreted any of his or its property,

or is about to do so with intent to defraud creditors. Plaintiff must make affidavit and furnish bond in not less than $250, and at least the amount claimed in circuit courts, and at least $50 and not exceeding $300 in justice's courts. Real and personal property, debts, moneys, credits, and bank-notes may be attached or levied on under execution or attachment.

Banks. Not less than three natural persons, one-third of whom shall be residents of the State, may form an association for carrying on the business of banking. They must enter into and sign articles of association. An organization certificate—which shall specifically state (1) the name assumed by the association, not to be the same as that of any other bank in the State; (2) the place where the business of discount and deposit are carried on; (3) the amount of capital stock, and the amount into which its shares are to be divided; (4) the names and places of residence of the shareholders, and the number of shares held by each of them; (5) the period at which such banks shall commence and terminate business—must be made under their hands and acknowledged before a clerk of some court of record, or notary public. This certificate shall be recorded in the register of deeds' office of the county where the bank may be established, and then transmitted to the secretary of State for record.

Upon fulfilling the requirements, the association shall have power: 1. To have corporate seal. 2. To have succession for a period of twenty years, unless dissolved or franchise forfeited. 3. To make contracts. 4. To sue and be sued. 5. To elect directors and officers. 6. To prescribe by laws. 7. To exercise by its board of directors or duly authorized officers or agents such incidental powers as are necessary to carry on the business of banking.

Such banking associations have power to purchase, hold, and convey real estate for the following purposes, and no other: 1. Such as may be necessary for its immediate accommodations in the transactions of business. 2. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted. 3. Such as shall be conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings. 4. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it; but no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debt due to it for a longer period than ten years.

In towns of 500 inhabitants or less, the capital must be at least $5,000, unless a special permit be given by the secretary of State; in towns of over 500 inhabitants and less than 1,000, the capital must be at least $10,000; in towns of over 2,000 inhabitants the capital must not be less than $25,000. At least 50 per cent of the capital stock must be paid in before the association shall be authorized to commence business, and at least 10 per cent of remainder at the end of each succeeding 6 months thereafter. Shares of stock shall be $100 each, and shall be deemed personal property. Banking associations may be dissolved by circuit court upon their application. The capital stock may be increased or diminished upon an application and proper showing made to the secretary of State.

The directors of an association may semi-annually declare a dividend of net profits, but each association shall, before the declaration of a dividend, carry one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall amount to 20 per cent of its capital stock.

Every director must own, in his own right, at least ten shares of capital stock. No association or member thereof shall, during the time it shall continue its banking operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital.

At least four reports showing resources and liabilities must be made each year to public examiner, who is ex-officio superintendent of banks. Special reports must be made at request of public examiner.

The shareholders are individually responsible, equally and ratably, and not one for the other, for all contracts, debts, and engagements of such association, made or entered into to the extent of the amounts of his stock therein at par value, in addition to the amount invested in and due on such shares.

Each association shall at all times have on hand in available funds an amount equal to 20 per cent of its deposits, one-half of which may consist of balances due the association from solvent banks, and one-half cash on hand.

The supreme court has held that the banking act, summarized above, is unconstitutional and void in so far as it prohibits individual citizens who were conducting the business of banking when the act went into effect (July 1, 1891,) from continuing such business without organizing corporations, as provided by the act.

Bill of Lading is an instrument in writing, signed by the carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract of carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. The title to the property mentioned in the bill is presumed to be in the holder thereof, and passes to every subsequent indorsee thereof.

Chattel Mortgages and Deeds of Trust. *(See Mortgages, post.)*

Collaterals. There are no statutory provisions concerning them. The common law governs.

Contracts. The civil code contains a codification of the common law on the subject of contracts, not materially changing the rules of the common law. The following contracts are invalid, unless the same or some note or memorandum thereof be in writing and subscribed by the party to be charged or his agent: An agreement that by its terms is not to be performed within a year from the making thereof. 2. A special promise to answer for the debt, default, or miscarriage of another. An agreement for the leasing for a longer period than one year or for the sale of real property, or of an interest therein, and if such an agreement is made by an agent of the party sought to be charged, the authority of the agent must be in writing, subscribed by the party sought to be charged. The provisions of the statute of fraud are the same generally as in all other States.

Conveyances. Conveyances of real estate or mortgages thereof, must be by an instrument in writing, subscribed by the party disposing of the same, or by his agent having written authority. To entitle such conveyance to be recorded, it must be acknowledged as provided by law. *(See Acknowledgments.)* The seal of a grantor or mortgagor is not required, and its absence does not invalidate or in any manner impair a conveyance. Every conveyance of real estate other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or encumbrancer, including an assignee of a mortgage or lease, in good faith and for a valuable consideration, whose conveyance is first duly recorded. The word "conveyance" embraces every instrument in writing by which any estate or interest in real property is mortgaged, aliened, or encumbered, or by which the title to any real property may be affected, except wills, executory contracts of sale and powers of attorney. An instrument containing a power to convey, or to execute instruments affecting real property, can not be revoked except by an instrument in writing, properly acknowledged and recorded in the same office in which the instrument containing the power was recorded. Real estate may be conveyed or mortgaged by the owner thereof alone, unless the same is a homestead, when both the husband and wife must join in the conveyance or incumbrance. A conveyance need not be witnessed. The only instrument which need be witnessed in this State is a chattel mortgage, which must have two witnesses.

Corporations. Corporations are formed under general laws, and can be formed by the association of three or more persons for the following purposes: Mining, manufacturing, and other industrial pursuits, and for any other lawful business; the construction or operation of railroads, wagon roads, irrigating ditches; for colleges, seminaries, churches, libraries, benevolent, charitable, and scientific associations; for conducting the business of insurance, banks of discount and deposit, and for loan, trust, and guarantee associations. The articles of incorporation must show the name of the corporation, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, the number of its directors, and the names and residence of such of them who are to serve until the election of such officers; the amount of its capital stock and the number of shares into which it is divided. The articles of incorporation of any railroad or wagon road must also state the kind of road intended to be constructed, the place from and to which it is intended to be run, the counties through which it is intended to be run, and the estimated length of the road. The articles must be subscribed by three or more persons, one-third of whom must be residents of the State and acknowledged before some competent officer. The articles must be filed with the secretary of State, and can be amended at any regular annual meeting of the stockholders, or at a special meeting called for that purpose. Each stockholder is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock that is held by him.

Corporations, Foreign. No foreign corporation, unless it be created for religious and charitable purposes only, shall transact any business within this State, or acquire, hold and dispose of property, real, personal or mixed, within this State, or sue or maintain any action at law or otherwise, in any of the courts of this State; until such corporation shall have filed in the office of the secretary of State a duly authenticated copy of its charter, or articles of incorporation, and shall have appointed some resident of this state as its agent for the service of process in any action in this state in which said corporation may be a party. Said appointment must be filed in the office of the secretary of State and in the office of the register of deeds of the county wherein said agent resides.

Courts. *Terms and Jurisdiction.* Circuit courts have exclusive chancery and common law jurisdiction above $100, and where title to real property is concerned. Courts sit twice a year in nearly all the counties. County courts hold two terms a year and are always open for business. They have exclusive probate jurisdiction, and in counties of a population of 20,000 civil jurisdiction concurrent with the circuit courts to $1,000; they have no civil jurisdiction in counties of a less population. Justice's jurisdiction, $100. Circuit courts also have concurrent jurisdiction with justices' courts for sums less than $100.

Days of Grace. *(See Notes and Bills of Exchange.)*

Depositions may be taken when witness does not reside in the county where the action is brought, or is absent therefrom; or when from age, infirmity, or imprisonment witness is unable to attend court, either party may commence taking at any time after service, and may be taken in the State before judge or clerk of the supreme court, or circuit court; or before the justice of the peace, notary public, United States circuit or district court, commissioner, or any person empowered by special commission. May be taken out of the State by a judge, justice, or chancellor, or clerk of any court of record, justice of the peace, notary public, mayor of any city, a commissioner appointed by the governor to take depositions, or any person authorized by the special commission from any court of this State. The officer before whom taken must not be interested, or relative, or attorney of either party. Are taken upon notice, signed by attorney, and the adverse party must be given sufficient time to travel to the place of taking by the usual route, and one day for preparation, exclusive of Sundays and day of service; and may be adjourned from day to day. Must be written by the officer or in his presence by the witness, or some disinterested person, and subscribed to by the witness. When taken must be sealed up, indorsed with title of the cause, name of officer taking the same, and by him addressed and transmitted to the clerk of the court where action is pending; must be filed at least one day before trial.

Descent and Distribution of Property. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purpose of administration; and descends, and must be distributed, in the following manner: If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife, and child or issue of such child; if the decedent leave a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child; if the decedent leave no surviving husband or wife, but leaves issue, the whole estates comes to such issue; if the deceased leaves no issue the estate comes in equal shares to the surviving husband or wife and the decedent's father; if there be no father, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister; if he leaves a mother also, she takes an equal share with brothers and sisters. If decedent leave no issue, nor husband, nor wife, the estate comes to the father; if there be no issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of decedent; if the mother survives, she takes an equal share. If the decedent leave a surviving husband or wife and no issue, and no father, mother, brother, or sister, the whole estate goes to the surviving husband or wife. If the decedent leave no husband, wife, or kindred, the estate escheats to the State for the support of common schools. Kindred of half blood inherit equally with those of whole blood in the same degree, unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors, in which case persons not of the blood of such ancestor are excluded.

Divorce. Marriage is dissolved by decree of the circuit courts. Causes for divorce are adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, and conviction for felony. Willful desertion, neglect, or habitual intemperance must continue for one year before being a ground for divorce. When a divorce is granted for adultery, the innocent party may marry again during the life of the other; but the guilty party cannot marry during the life of the innocent party, any one except the innocent party. Six months' residence is required before action can be commenced, and unless personal service of the summons is made on the defendant after order of publication is obtained, the decree of divorce must not be granted for one year. At least one corroborating witness is necessary before decree can be obtained. The court gives such direction for the custody and care of the

children as may seem necessary and proper, and may at any time vacate or modify the same.

Dower. Dower and curtesy are abolished.

Executions issue as of course at any time within five years after judgment, and must be returned within sixty days. Lands levied on need not be appraised, but notice of sale must be given. Same provisions apply in justice's courts as to levy, etc., on personal property. There is no stay law, and execution can only be stayed by order of the court for irregularity, by injunction, or by appeal with security given. Real estate sold under execution may be redeemed within one year.

Exemptions. The following property is absolutely exempt from all process, levy, or sale: Family pictures, pew in church, lot or lots in burial ground, family bible, school books used by the family, and all other books used as a part of the family library not exceeding in value $200; wearing apparel and clothing of the debtor and his family, the provisions for the debtor and his family necessary for one year's supply, provided or growing, or both, and fuel for one year. Homestead—One acre if within a town plat, and 160 acres if not, with improvements thereon, which land and improvements shall not exceed $5,000 in value. Additional exemptions to the amount of $750 are allowed to the head of a family, and to a single person to the value of $300. The debtor, if the head of a family, may, in lieu of the additional exemptions, select and choose the following property: 1. Miscellaneous books and musical instruments not exceeding $200 in value. 2. Household and kitchen furniture, used by the debtor and family, not exceeding $200 in value. 3. Two cows, five swine, two yoke of oxen, one span of horses or mules, twenty-five sheep and their lambs, and all wool of the same, and all cloth or yarn manufactured therefrom; the necessary food for the animals for one year, provided or growing; one wagon, one sleigh, two plows, one harrow, and farming utensils not exceeding $1,250 in value. 4. The tools and implements of any mechanic used and kept for the purpose of carrying on his trade or business, and stock in trade, not exceeding $200 in value; the library and instruments of any professional person not exceeding $900 in value; all money received by the widow or children for insurance upon the life of any person who, when living, was the head of the family, is absolutely and forever exempt.

Fraudulent Conveyances. Every transfer of personal property other than a thing in action, and every lien thereon other than a mortgage, when allowed by law, is conclusively presumed if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent and therefore void against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any person on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

Garnishment. This remedy lies whenever attachment does, but applies only to justice courts, upon affidavit for it showing indebtedness, and that some person or corporation within the county where the action is brought has property, money, or credits in his hands or under his control belonging to the defendant. No undertaking is required. Property must be delivered and money paid into court or undertaking given to the plaintiff, with one or more sureties, that the amount will be paid or the property forthcoming as the court may direct.

Holidays. Holidays are Sunday, the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, and the thirtieth day of May, and every day on which an election is held throughout the State. Every day appointed by the President of the United States or by the governor of this State for a public fast or thanksgiving are holidays. If the 1st of January, the 22d of February, the 4th of July, or the 25th of December falls upon Sunday, the Monday following is a holiday. Sundays and holidays are excluded from the computation of days of grace.

Husband and Wife. (*See Married Woman, post.*)

Interest. Legal rate, 7 per cent; but parties may contract in writing for 12 per cent. Usury forfeits all interest. Interest on open accounts runs from date of last item charged, whether debit or credit. Legal rate allowed on judgments is 7 per cent from date and after property sold on execution during the year of redemption, 12 per cent.

Judgments of courts of record are a lien on all real estate except the homestead for ten years from time such judgment is docketed in the clerk's office of the county where the land is situated, and, by having execution issued every five years, are good for twenty years. In courts of record judgment may be obtained within thirty days after service of summons and complaint; in justices' courts, four days, where no defense is interposed.

Liens. Mechanics, laborers, and furnishers of material, machinery, or fixtures, by virtue of any contract with the owner, his agent, trustee, contractor or sub-contractor, for any building, erection, or other improvements upon land, have for labor done or materials, machinery, or fixtures furnished, a lien upon such building, erection, or improvement, and upon the land belonging to such owner on which the same is situated, to secure the payment of such labor, materials, material machinery, or fixtures furnished. A verified account of the amount of the lien claimed must be filed in the office of the clerk of the circuit court of the county wherein the property is located within four months after such materials shall have been furnished and labor performed. No person is entitled to mechanic's lien who has taken collateral security upon the same contract. Any person owning and operating a threshing machine has a lien upon the grain threshed by the machine for the threshing thereof.

Limitations. Personal actions, two years; on contracts or obligations, six years: on sealed instruments and action affecting real property, twenty years, and on judgments, or decrees of any court other than the courts of this State, ten years; of the courts of this State, twenty years.

Married Women retain their own real and personal property, and may make contracts, sue and be sued, as if sole. Neither husband nor wife has any interest in the property of the other. Dower and curtesy are abolished. Married women retain the same legal existence and personality after as before marriage, and shall receive the same protection of all rights as a woman which her husband does as a man, and has the same right to sue in her own name as her husband has in his.

Mortgages. A mortgage of real property can be created, renewed, or extended only by writing, with the formalities required in the case of grant of real estate. The wife need not join only in mortgage of homestead. Mortgages containing power of sale may be foreclosed by advertisement. Mortgages may be foreclosed by action, and a personal judgment obtained in the same action against the mortgagor and any guarantor, or surety, or indorser, or subsequent purchaser of the mortgaged property, assuming the mortgage for any deficiency from the debt and cost arising on sale of the mortgaged premises. The mortgagee has possession of the premises during the year of redemption after the sale. A mortgage of a homestead shall be of no validity unless the husband and wife, if the owner is married and both husband and wife are residents of this State, concur in, and sign the same joint instrument. The same right of redemption exists as in the case of sale under execution. By the laws of 1897, it is provided that: A mortgagee must state in the mortgage his post-office address before recording the mortgage, and every assignee or other owner or holder of any real estate mortgage must, within thirty days after becoming the owner thereof, file with the register of deeds of the county where such mortgage is recorded, a statement showing the page and volume where such mortgage is recorded and his name and post-office address; and no interest shall become due and collectable by the mortgagee or owner of any mortgage upon any real estate in South Dakota until the foregoing provisions have been complied with. *Chattel Mortgages.* A mortgage of personal property can be created, renewed, or extended only by a writing subscribed by the mortgagor. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrances of the property in good faith and for value, unless it is filed by depositing the original, or an authenticated copy thereof, in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated; and it ceases to be valid, as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith, after the expiration of three years from the filing thereof, unless within thirty days next preceding the expiration of such a term a copy of the mortgage, and a statement of the amount of the existing debt, sworn to and subscribed by the mortgagee, are filed anew; this renews for three years more. A mortgage of personal property must be signed by the mortgagor in the presence of two persons, who must sign the same as witnesses thereto, and no further proof of acknowledgment is required. Personal property mortgaged may be taken under attachment, or execution issued at the suit of a creditor of a mortgagor; before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer, payable to the order of the mortgagee. The following applies only to mortgages executed since June 30, 1897: The mortgagee of every chattel mortgage at the time of making and delivery thereof shall prepare for and deliver to the mortgagor a full and true copy of such mortgage without additional cost, and every chattel mortgage shall be void unless it appears upon the mortgage, over the signature of the mortgagor, that a true copy of such mortgage has been delivered to and received by the mortgagor, and unless such delivery and receipt of a copy of the mortgage appears over the mortgagor's signature the mortgage can not be filed.

Notes and Bills of Exchange. There is no statutory law requiring that commercial paper should be made payable at a bank or at any other specified place. Three days of grace allowed on all bills of exchange or sight drafts, whether foreign or domestic, and on all promissory notes, bills of exchange and drafts, on the face of which time is specified, and notes on demand for payment of same. Acceptances must be in writing by the drawee or an acceptor for honor. To hold indorser, the instrument must be presented on the day of maturity, and notice of dishonor given. Damages are allowed in favor of holders for value on bills of exchange drawn or negotiated within the State and protested for non-acceptance or non-payment. Apparent maturity of a non-interest bearing sight or demand bill of exchange is ten days after date, in addition to the time required for transmission; of interest-bearing bills of exchange, one year from date; of non-interest-bearing notes, six months, and of interest-bearing notes, one year from date. Bills and notes falling due on a holiday are deemed due and payable on the following day. Sundays and holidays are excluded from the computation of days of grace.

Powers of Attorney. A power of attorney to convey or mortgage real property must be acknowledged and recorded in the office of the register of deeds of the county in which the property is situated and can only be revoked by an instrument in writing acknowledged and recorded in the same office. (*See Acknowledgments and Conveyances.*)

Probate Law. (*See Administration, Descent and Distribution, and Wills.*)

Protest. (*See Notes and Bills of Exchange.*)

Replevin or Claim and Delivery. The plaintiff in an action to recover possession of personal property may, at the time of issuing summons, or at any time before answer, claim delivery of property; he must make an affidavit stating that he is the owner of the property and particularly describing it, or that he is lawfully entitled to the possession thereof by virtue of a special property therein; that the property is wrongfully detained by the defendant, and allege the cause of detention; that the same has not been taken for taxes, assessment, or fine, or seized under execution or attachment against the property of plaintiff, or, if so seized, that it is exempt from seizure; and the actual value of the property. The plaintiff must make indorsement in writing upon affidavit, requiring the sheriff to take the property and deliver it to him. Plaintiff must execute written undertaking in double the value of the property, to be approved by the sheriff. A copy of all papers must be served upon defendant by the sheriff at the time of taking the property. Sheriff must hold property three days, and if defendant fail to execute an undertaking with sufficient surety in double the value of the property taken, must deliver property to plaintiff. If sheriff approves defendant's undertaking, property must be redelivered to defendant.

Suits. (*See Actions.*)

Taxes become due and payable on the first day of December, and delinquent on the first day of March following, and draw 12 per cent interest thereafter until paid, or the land is sold as hereinafter stated, the interest being added on the first day of each month. Lands are sold on the first Monday of November following, and may be redeemed within two years by payment of purchase money and interest at the rate of 15 per cent per annum and all taxes subsequently paid. Taxes become a lien on real property as between vendor and vendee on the first day of December, and if personal taxes are not paid by the first day of July the county treasurer, who is the tax collector, may proceed to enforce the collection of them by distress and sale.

Transfer of Corporation Stocks. Shares of corporate stock are personal property and may be transferred by indorsement by the signature of the proprietor, or his attorney, or legal representative, and delivery of the certificate, but such transfer is not valid except between the parties thereto until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.

Wills. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his or her estate, real and personal. A married woman may dispose of all her separate estate by will, without the consent of her husband. A will must be subscribed at the end

thereof by the testator himself, or some person in his presence, and by his direction, must subscribe his name thereto. Unless the will be an holographic will, the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him, or by his authority. The testator must at the time declare to the attesting witnesses that it is his will. There must be two attesting witnesses who must sign their names at the end of the will, at the testator's request and in his presence. Nuncupative wills are valid when the estate bequeathed does not exceed in value $1,000. Must be proved by two witnesses. The decedent must, at the time of making, have been in military service, in the field or at sea, or at the time in expectation of immediate death from an injury received the same day.

SYNOPSIS OF THE LAWS OF TENNESSEE

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by LEMUEL R. CAMPBELL, Attorney at Law, Nashville. (*See Card in Attorneys' List.*)

Accounts. An account on which action is brought, coming from another State, with the affidavit of the plaintiff to its correctness, and the certificate of a notary public, and his official seal annexed, or the certificate of a commissioner of the State of Tennessee, is conclusive against the party sought to be charged, unless he shall on oath deny the account. Said denial, under oath, destroys altogether the evidentiary character of the account.

Acknowledgments within the State must be taken before a judge, or chairman or clerk of a county court, or his deputy, or a notary public. In other States, before any judge or clerk of a court of record, notary public, or commissioner of Tennessee. The certificate of a notary public or a commissioner, under his seal of office, is sufficient proof of his official character. If before a judge of a court of record, his official character must be certified to by the clerk of his court, under his official seal, or private seal, if there is no official seal, or by the governor of his State, under the great seal of said State. If before a clerk of a court of record, and certified by him under his seal of office, the judge, chief justice, or presiding magistrate shall certify to the clerk's official character. If made out of the United States, must be under seal before a commissioner of Tennessee, notary public, or an ambassador, minister, or consul of the United States.

Actions. Persons jointly or severally, or jointly and severally bound on the same instrument, or by judgment, decree, or statute, including the makers and indorsers of negotiable paper and sureties, may all, or any part of them, be sued in the same action. Every written contract, instrument, or signature, purporting to be executed by the party sought to be charged, his partner, agent, or attorney in fact, and constituting the foundation of an action, is conclusive evidence against such party, unless the execution thereof is denied under oath. When offered in evidence by the defendant, execution must, in like manner, be denied under oath, or it is conclusive. When partners sue on a bill of exchange, bond, or note, not necessary to prove partnership, unless denied under oath. Actions, legal or equitable, are commenced by personal service of summons or subpœna, by advertisement, or attachment, as case may be. Security must first be given for all costs and damages, which may be awarded against person suing out process; but pauper's oath may be taken in lieu thereof, in all actions except for false imprisonment, malicious prosecution, and slanderous words. Service of process from court of record must be had five days before return day, which in circuit court, is first day of term, and in the chancery court the first Monday of each month, or first day of a term In circuit court, except in action of ejectment, in which declaration must accompany summons, declaration must be filed within the first three days of the term, and demurrer or plea thereto in next two days; and trial and judgment may be had at next ensuing term. In chancery court, bill is filed before issuance of process, and defendant has first three days after return day to plead, answer or demur, the return day being excluded.

Administration. Letters of administration are granted: 1. To the husband or widow; 2. To the next of kin; 3. To the largest creditor; 4. To the public administrator, if no one applies in six months. All property, real and personal, except what is exempted and what widow takes, are assets for payment of debts. Preferred debts are, funeral expenses, expense of administration, and debts due the State. (For widows' rights, *see Husband and Wife.*) Insolvent estates, not exceeding the value of $1,000, may be administered in county courts. Of such estates of greater value, county and chancery court have concurrent jurisdiction. Executor or administrator makes suggestion of insolvency to county court; clerk thereupon requires executor or administrator to give notice in a newspaper published in the State and at court house door of the county for creditors to file their claims, by a day fixed in said notice, which day shall not be less than three, nor more than six months after day of said notice, and any claim not filed on or before said day, or before an appropriation of the funds is made, is forever barred in both law and equity. The assets of insolvent estates, after preferred debts above enumerated and exempt articles are deducted and widow's rights are allowed, are divided ratably among the creditors, whose claims have been properly filed. (For claims against executors or administrators of other estates, *see Limitations of Suits.*)

Affidavits may be taken in another State of the Union, or foreign country, for use in this State, before a commissioner of Tennessee. Answers and other pleadings in chancery, may be sworn to before a commissioner of Tennessee, notary public, justice of the peace, court of record, or clerks of such court, or special commissioner appointed by Tennessee court or clerk. The certificate of the commissioner, notary public, and clerk must be under seal of office. The certificate of the judge or justice of the peace must be authenticated by the certificate of the clerk of the court wherein the judge or justice presides.

Aliens. An alien, resident or non-resident, may take and hold property, real or personal, in this State, either by purchase, descent, or devise and dispose of and transmit same by sale, descent, or devise, as a native citizen. Escheat on account of alienage is abolished.

Appeal lies from judgment of justice of peace to next term of circuit court, and must be prayed and perfected by giving bond or taking pauper's oath within two days after judgment is entered. From a final judgment or decree of the circuit or chancery court, an appeal lies to the next term of the supreme court, and must be prayed and perfected within thirty days after judgment or decree is entered; but for good cause the court may extend the time for giving bonds or taking pauper's oath thirty days. When decree is for a specific amount, appellants shall give bond for the amount of the decree and damages and costs, but those sued in representative capacity need only secure costs. In all actions founded on bonds for payment of money, bills single, bills of exchange, promissory notes, or liquidated accounts signed by the party to be charged therewith, written obligations for payment of bank notes or promissory notes, bonds, written obligations for delivery of specific articles, or endorsements on negotiable instruments, the appellant must give bond with sureties, for payment of debt, damages, and costs, and for satisfaction of judgment of superior court, where such case may be finally tried and determined. In other cases he must give bond for payment of costs and damages. All cases may be appealed on pauper's oath, except those for false imprisonment, malicious prosecution, and slanderous words. A writ of error from supreme court, to review judgments from the chancery or circuit courts, may be had from the clerk of the supreme court, within one year after judgment or decree, and from any judge of said court within two years thereafter, upon giving bond for costs or upon pauper's oath. Infants, married women, persons non compos mentis, and persons out of the United States, may prosecute said writ within the time prescribed, after disability is removed. Writ of error does not operate as supersedeas of execution, but judge of supreme court may order a supersedeas to issue upon giving bond, or taking pauper's oath.

Arbitration. All cases may be submitted to arbitration by persons interested therein. The submission must be in writing, and must name the arbitrator, or arbitrators, and describe the demand submitted and the court by which judgment or award is to be entered. Attendance of witnesses before arbitrators may be enforced, as in trial of other cases; and witnesses may be sworn and examined and are subject to usual penalties to secure truth. When the award is adopted, it is filed and entered of record, and judgment will be rendered and execution issue accordingly.

Arrest. There is no arrest or imprisonment for debt in Tennessee.

Assignments. The Act of 1895 regulating general assignment was declared unconstitutional by the supreme court and the Act of 1881 goes back into effect. Under this act, preferences in general assignment are not allowed but special assignments are made with preferences, and under these the Act of 1881 as to general assignments is practically rendered nugatory.

Attachment process will issue when the debtor resides out of the State; is about to remove, or has removed himself or property out of the State; has removed or is removing himself from the county privately; is concealing himself, so that the ordinary process of law can not be served upon him; absconds or is absconding or concealing himself or property; has fraudulently disposed of, or is about to dispose of his property; or when any person, liable for any debts, residing out of the State, dies, leaving property in the State. Attachment will also issue on demands not due, in all the above cases except the first; also in above cases at suit of surety, as accommodation endorser on paper due and not due. When debtor and creditor are non-residents of this State, and are residents of the same State, the creditor shall not attach, unless the property has been fraudulently removed to evade process in said State. Debts due and not due, owing to the defendant, and property of the defendant of any kind in the hands of a third person, are subject to garnishment. Statutory liens on personal property, when no method of enforcing same has been provided by the statute creating them, may be enforced by original attachment levied on property on which lien exists, whether in hands of creditor, owner, or other party not an innocent purchaser. A foreign corporation, having complied with law of Tennessee, and doing business therein, and having no agent in county in which suit is brought, upon whom process can be served, may be proceeded against by attachment.

Banks. All persons and partnerships paying taxes for the use of money, as money dealers, may receive deposits, issue checks or bills of exchange, or discount bills, notes, etc., but shall not be allowed to charge on bills a greater discount than legal interest and exchange.

Any company incorporated under the laws of Tennessee, having, by its charter, the right to receive money in trust or otherwise, has the power to receive deposits and loan same, and its capital on any kind of commercial or business paper or real estate, buy and sell exchange, and all kinds of public or private securities and commercial paper. State banks may be chartered at any time in same manner as other private corporations, and, if they so choose, may couple with the usual banking business, a safe deposit and trust company. They may do all acts usually performed by banks. Allow 3 per cent interest on deposits, advance money on real and personal property, and sell same; and, if the safe deposit and trust feature is added, may take on deposit jewelry and other valuables and guarantee the preservation and delivery of same; guarantee the titles to real estate and the payment of bonds and mortgages; execute trusts of every description; and own a vault, and rent out boxes for the keeping of valuables, but shall not be liable for loss by fire, theft, or other cause. Stockholders not liable, except for payment of stock subscribed by each. Every six months banks must publish a statement of their condition. The secretary of State is made a bank examiner, and required to examine each bank quarterly and report to the comptroller, and each bank is subject to legislative inspection. There is no law regulating the class of bonds in which savings banks may invest.

Bills and Notes. By act of legislature, passed April 6, 1899, Chapter 94 of Laws of 1899, a general law relating to negotiable instruments was passed, "Being an act to establish a law uniform with the laws of other States on that subject." An instrument to be negotiable must conform to the following requirements: 1. It must be in writing, and signed by the maker or drawer. 2. Must contain an unconditional promise or order to pay a certain sum in money. 3. Must be payable on demand, or at a fixed or determinable future time. 4. Must be payable to order or bearer. 5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. Negotiability is not affected by a provision authorizing sale of collateral securities, or confession of judgment, or which waives benefit of any law intended for the protection of the obligor, or gives the holder an election to require something to be done in lieu of payment of money. Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 o'clock noon on Saturday, when that entire day is not a holiday. Notice of non-payment must be given to the drawer and to each indorser. For details of the law of bills and notes, reference is made to chap. 94, of the laws of Tennessee, 1899.

Conveyances. A fee simple estate is presumed to pass by grant of real property, unless it appears from the grant that a less estate was intended; and word "heirs" not necessary to create fee simple estate. Wife must join to convey homestead. Private seals are abolished. No

attesting witnesses required by law. Deed should contain covenant of seizin. (*See Acknowledgments.*)

Corporations. Private corporations, for a variety of purposes, embracing almost every industry, may be formed under section 1691 *et seq.*, M. & V. Code, by five or more persons over the age of twenty-one, copying the form of charter adapted to the purpose, and appending an application to the State of Tennessee for such charter, and acknowledging and registering the same in the county where the principal office is to be situated, and in the office of the secretary of State, and then registering in the said county the certificate of registration given by the secretary of State, and a fac simile of the State seal. The name and capital stock may be changed, and new powers added, by the board of directors copying the proposed amendment, and signing an application therefor to the State of Tennessee, and acknowledging and registering the same in the same way as provided for charters. The general powers of such corporation shall be to sue and be sued, to have and use a common seal, to hold, in addition to personal property, real estate necessary for corporate business, and real estate in payment of debts, and to sell realty for corporate purposes, and to establish by-laws, etc., not inconsistent with the laws and constitution, to appoint officers and agents, to designate name of office and officers and compensation of officers, to borrow money and issue notes and stock upon corporate property, and secure same by mortgage. A failure to elect officers does not dissolve the corporation, but incumbents shall hold until appointment and qualification of successors, and terms may be fixed by by-laws, but not to exceed two years. It may, by by-laws, regulate subscriptions and transfer of stock, fix capital to be invested in the enterprise, and division into shares, and time for payment by subscribers, and amount of calls, and in case of failure of any stockholder to pay his subscription he may be sued. There may be five or more directors elected in person or by proxy by a majority of votes cast, each share representing one vote. They shall keep a full and true record of proceedings, and put on minutes annual statement of receipts and disbursements, subject to inspection of stockholders. A majority shall constitute a quorum, and shall fill vacancies until next election. The first board shall consist of the five or more incorporators who obtained charter. The books shall show names of stockholders, and interest and amounts paid for subscriptions, the transfer of stock by and to whom, and all other transactions of interest to stockholders. Unpaid stock subscribed shall be a fund for payment of debts due from the corporation, and transfer of stock by subscriber does not relieve him from payment, unless transferee has paid all due on his original subscription. The corporation has no powers except those expressly given, or necessarily implied from the nature of the business, and by no inference may it discount notes or bills, deal in gold or silver coin, issue evidence of debts as currency, buy and sell agricultural products, deal in merchandise, or engage in any business outside of the purposes of the charter, except it be under a charter expressly authorizing these acts, but corporations formed for manufacturing raw material by machinery into useful articles, whether of wood or metal, or a combination of them, may deal in articles so manufactured and articles properly connected therewith. Such corporations are liable to the payment of privilege taxes as dealers. And any company incorporated under the laws of Tennessee, having by its charter the right to receive moneys in trust or otherwise, shall be held to have the power to receive deposits, and loan the same and its capital on any kind of commercial or business paper or real estate, buy and sell exchange and all kinds of public or private securities and commercial paper, and the exercise of foregoing powers does not operate to forfeit or affect any franchise, right, power, privilege, or immunity granted to such corporation by its charter. All such charters may be repealed or amended at any time. If any fundamental amendment be not accepted by a vote representing more than half of the stock the corporation shall be liquidated. If such amendment be accepted by the corporation, said corporation shall pay any dissenting stockholder the value of his stock, not exceeding par, and shall also pay on the same basis to persons under disability for their stock, but the claims of creditors shall take priority over them. All stock in the corporation so formed is subject to execution. Intentional fraud in failing to comply substantially with the charter, or in deceiving the public or individuals, diversion of funds of the corporation, the payment of dividends without leaving sufficient funds to meet liabilities, keeping false accounts, by which injury is sustained, and the making of a false report, and frauds, subject those concerned therein to the penalties of misdemeanor, and liability to suit for damages. The charter will be forfeited if the board of directors participated in such acts. Nonuser shall not operate as a dissolution unless all the corporate property has been appropriated to the payment of debts. All such corporations whose charters are terminated shall exist for five years thereafter for the purposes of liquidation only, and the managers of the business at the time of such dissolution are trustees for the stockholders and creditors for the purposes of liquidation. Every corporation organized or created under or by virtue of any government other than that of Tennessee, for any purpose whatever, desiring to carry on business in Tennessee, of any kind or character, shall first file in the office of the secretary of State a copy of its charter. It is unlawful for any such corporation, without first having complied with this provision, to do, or attempt to do, any business in Tennessee; and a violation of this act subjects offender to a fine of not less than $100 nor more than $500, at discretion of jury trying the case. When such corporation complies with these provisions, it is then to all intents and purposes a domestic corporation, and may sue and be sued in the courts of this State, and is subject to the jurisdiction of the courts of this State, just as if it were created under the laws of Tennessee. Until these provisions are complied with such corporation can not sue in courts of Tennessee. This can not affect interstate commerce. It has been held only to apply to those corporations which have established themselves in Tennessee, in such a way as to acquire a domicile or situs therein.

Courts. *Terms and Jurisdiction.* Circuit courts hold three terms annually, and have general common law jurisdiction in all cases involving over $50. Chancery courts, holding two terms annually, have full equity jurisdiction above $50, and concurrent jurisdiction with the circuit courts of all civil causes, except actions for injuries to person, property, or chaarcter, involving unliquidated damages. Justices of the peace have jurisdiction in equity up to $50; on all unsettled accounts, obligations, contracts, etc., to and for recovery of property, and for damages, except for libel and slander, up to $500; upon all notes and upon indorsement of negotiable paper where demand and notice are expressly waived in the instrument, up to $1,000.

Days of Grace. (*See Bills and Notes.*)

Deeds. Until registered, deeds are not good, except between parties and privies. Lands held by unregistered deeds are subject to debts of both vendor and vendee. Wife must join in deed to convey homestead.

Depositions. Evidence may be taken by depositions in civil actions by either party. 1. When the witness from age, bodily infirmity, or other cause, is incapable of attending, to give testimony at the trial. 2. When he resides out of the State. 3. When he resides in the State, but not within the limits of the county in which the suit is pending, in which case the adverse party may, if he desire to have the witness examined in open court, cause him to be subpœnaed. 4. When he is under the necessity of leaving the State before the cause is tried, or even before it is at issue. 5. When he is about to leave the county in which the suit is pending, and will probably not return until after the trial. 6. When he is the only witness to a material fact. 7. When he is an officer of the United States, an officer of this State, or of any county in the State, the clerk of any court of record other than that in which the suit is pending, a member of the general assembly while in session, or clerk or officer thereof, a practicing physician or attorney, a jailer or keeper of a public prison in any county other than that in which the suit is pending. 8. When he is a notary public, whether a suit be pending or not; to be evidence between the same parties in any suit then or thereafter pending, should the notary die or remove out of the State before the trial. 9. When a suit is brought by a party in *forma pauperis*. Female witnesses can not be compelled to attend in civil suits in person, except upon sufficient cause and order of court therefor. The deposition of any person residing in the county where the suit is pending may be taken by either party, and said witness may be summoned at the trial. Depositions in cases enumerated in above sections 1, 4, 5, and 6 may be taken at any time after action brought upon such a notice as a court of justice may order, or upon giving five days' notice when depositions are taken in the county where the suit is pending, and when taken out of the county for 50 miles, or under, five days; from 50 to 100 miles, ten days; 100 to 250 miles, fifteen days; 250 to 500 miles, twenty days; over 500 miles, thirty days. If within the United States, and west of the Rocky Mountains, such a time as the court or clerk may order, not exceeding forty days. In foreign countries, such time as the court or clerk may order. Service of notice may be made upon counsel of non-resident parties. When the witnesses reside out of the State or over 150 miles from the place of trial, either party may take depositions by filing interrogatories with the clerk, giving the opposite party notice thereof, who shall have ten days thereafter to file cross-interrogatories, to which rebutting interrogatories may then be put; at any time after which the deposition may be taken upon a certified copy of the interrogatories to be issued by the clerk. Any person authorized to take depositions is, while engaged in the discharge of his duties, vested with all the powers of the court to preserve order, prevent interruption, and control the conduct of the parties in the examination of the witness. The commissioner, having first sworn the witness according to law, should require the questions to be reduced to writing before being put, and then read to the witness, and should take down his answers in writing, or cause the same to be done by the witness himself, as near as may be in the witness' own words. The depositions, when complete, shall be enveloped together with the commission, if any, and all documents which may have been deposed to, sealed, with the commissioner's name written across the seal, and directed to the clerk of the court where the cause is pending, with the title of the cause indorsed thereon, and may be sent by mail, express, or private conveyance. If sent by private conveyance the person delivering it shall make affidavit before the clerk that he received the deposition from the commissioner, that it has not been out of his possession, or opened by him, or while in his possession. The commissioner, or person authorized to take depositions has power to issue subpœna for witnesses, which may be served by the sheriff or any constable; and the certificate of the commissioner, or person authorized, that the witness failed to appear, together with the return of the officer, is proof of the fact. Deposition may be taken by any judge, justice of the peace, mayor or chief magistrate of a town or city, the clerk of any court, or any other person properly commissioned or appointed by the court or clerk, not being interested, of counsel, or related to either of the parties within the sixth degree, computing by the civil law. They may also be taken by any notary public of this and other States, in the county in which he resides, and the certificate of the notary shall show his locality. Depositions may be taken in all cases pending before justices of the peace, under the same rules, regulations, and restrictions as in cases pending in the courts of record. Notaries public, duly and lawfully commissioned by the proper authorities of other States than Tennessee, empowered by law of such State to take depositions, are hereby authorized to take depositions to be used in the courts of the State upon the same terms that are provided for taking depositions by other officials in such States. Certificate of such notary must show the date of commencement and of expiration of his commission as notary.

Descent and Distribution. Real estate, real property, and lands, include lands, tenements and hereditaments, and all rights thereto, and interest therein, equitable as well as legal. The land of intestate owner is inherited in the following manner: Without reference to source of intestate's title, by all the sons and daughters of deceased, to be divided among them equally. And if any child of said intestate shall have died in his life-time, his lineal descendants shall represent their parent and be entitled to same portion of the estate of the deceased as their parent would have been entitled to if living. If there be no issue or brothers or sisters, nor their issue, and either parent be living, then by such parent. If the estate was acquired by the intestate, and he died without issue, his land shall be inherited by his brothers and sisters of the whole and half blood born before his death or afterward, to be divided among the m equally. And if any such brother or sister died in the intestate's life time leaving issue, said issue shall represent their deceased parent, and be entitled to the same part of the estate of the uncle or aunt, as their father or mother would have been entitled to, if living. In default of brothers and sisters and their issue, the land shall be inherited by the father and mother of the intestate as tenants in common. If both be dead, in equal moieties by the heirs of the father and mother in equal degree, or representing those in equal degree of relationship to the intestate; but if such heirs or those they represent, do not stand in equal degree of relationship to the intestate, then the heirs nearest in blood, or representing those who are nearest in blood to the intestate, shall take in preference to those more remote. When the land came to the intestate by gift, devise, or descent, from a parent or the ancestor of a parent, and he die without issue—if he have brothers or sisters of the paternal line of the half blood, and brothers and sisters of the maternal line also of the half blood, then the land shall be inherited by the said brothers and sisters on the part of the parent from whom the estate came, in the same manner as by brothers and sisters of the whole blood, until the line of such parent is exhausted of the half blood, to the exclusion of the other line. If he have no brothers or sisters, then it shall be inherited by the parent, if living, from whom and whose ancestor it came, in preference to the other parent. If both parents be dead, then by the heirs of the parent from whom or whose ancestor it came. If the intestate dies, leaving no heirs at law capable of inheriting the real estate, it shall be inherited by the husband or wife in fee simple. A posthumous child of a testator not provided for in his will, takes by descent such share of his estate as would have fallen to it in case of intestacy; to be contributed by the devisees and legatees, in the proportion to the several bequests and legacies to the whole estate. The personal estate as to which any person dies intestate, after the payment of the debts and charges against the estate, shall be distributed as follows: 1. To the

widow and children, or the descendants of children representing them equally, the widows taking a child's share. 2. To the widow altogether, if there are no children or descendants of children. 3. To the children or the descendants, in equal parts if there is no widow; the descendants taking in equal parts the share of their deceased parents. 4. If no children to the father. 5. If no father to the mother, and brothers and sisters, representing them equally; the mother taking an equal share with each brother and sister. 6. If no brothers or sisters or their children, exclusively to the mother; if no mother, exclusively to the brothers and sisters or their children representing them. 7. If no mother, brother or sister, or their children, to any of the next of kin of the intestate, who are in equal degrees, equally. There is no representation among collaterals after the brother's and sister's children. Widow of testator dissatisfied with his will may dissent therefrom in open court within one year after said will is probated, and will then be entitled to a year's support, to be set apart by the commissioners of the county court from the estate of the testator; to his exempt personalty, homestead, dower, and in addition, one-third of his personal estate, if her husband has no children or not more than two; but if more than two children, then to a child's part of such personal estate.

Divorce. A divorce, a vinculo matrimonii, may be decreed by either circuit or chancery court for natural impotence and inability of procreation of either party, at the time of the contract, still continuing; for either party knowingly to enter into a second marriage, in violation of a previous marriage, still subsisting; for adultery of either party; for willful or malicious desertion, or absence of either party without reasonable cause for two years; for being convicted of any crime rendering party infamous under the laws of this State; for being convicted of a felony and being sentenced to the penitentiary; for attempt of either party on the life of the other by poison or other means showing malice; for refusal on part of wife to remove with her husband to this State, without a reasonable cause, and willfully absenting herself from him for two years; for pregnancy of woman at time of marriage by another person, without the knowledge of the husband; for habitual drunkenness of either party, when he or she has contracted the habit of drunkenness after marriage. Divorce, a mensa et thoro and from the bonds of matrimony at the discretion of the court may be decreed: For such cruel and inhuman treatment or conduct toward his wife, on the part of the husband, as renders it unsafe and improper for her to cohabit with him, and be under his dominion and control; where the husband has offered such indignities to the person of the wife as to render her condition intolerable, and thereby force her to withdraw; where the husband has abandoned his wife or turned her out of doors, and refused or neglected to provide for her. A divorce may be granted for any of the aforesaid causes, though the acts complained of were committed out of the State, or the petitioner resided out of the State at the time, no matter where the other party resides, if the petitioner has resided in this State for two years next preceding the filing of the petition.

Dower. (*See Married Women.*)

Executions may issue forthwith, and from circuit courts are returnable to the succeeding term; from justices' courts in thirty days. Stay of eight months may be had in judgments of a justice by furnishing security. Debtor has two years in which to redeem realty sold under execution.

Exemptions. Homestead, $1,000. Personal property consisting of household goods, supplies, tools and stock, etc., amounting in all to about $1,200.

Garnishment. (*See Attachment.*)

Holidays. Every Sunday, January 1st, February 22d, July 4th, December 25th, Good Friday, Decoration Day, Memorial Day, 1st Monday in September, known as Labor Day; and when any of these days falls on Sunday then the following Monday is substituted. Also, all days appointed by the governor of this State, or the President of the United States for public fast or thanksgiving, and election days, are holidays.

Homestead of value $1,000 in real estate, legal or equitable, is reserved to the head of a family, exempt from sale under legal process during his life. At a husband's death it inures to the benefit of his wife and children, free from the claims of creditors. It may be sold by joint consent of husband and wife, when that relation exists, evidenced by conveyance, duly executed as required by law for married women. It is liable for taxes and purchase money, or money paid for improvement thereon.

Husband and Wife. Husband is not liable for antenuptial debts of his wife, but his marital rights do not so attach to her property, as to defeat the collection of same. Wife's personalty can not be subjected to the payment of husband's antenuptial debts. Wife can hold real and personal property separate from the husband, and not liable for his debts. Rents and profits of wife's land not subject to husband's debts, nor can the husband's marital interest in wife's land be sold during her life. Wife can dispose of her separate estate by deed or will, unless the power so to do is expressly withheld in the instrument creating it. Husband has curtesy, as at common law. Wife has dower, which is one-third for life of real estate, both legal and equitable, of which her husband died seized and possessed. At husband's death, homestead inures to benefit of wife and children. Widow of intestate entitled to year's support, and to exempt personal property of husband for benefit of herself and children. Life insurance effected on life of husband, by either husband or wife, at his death inures to the benefit of his widow and children, free from claims of his creditors. Married women over twenty-one, who have abandoned their husbands, or whose husbands have abandoned them, have the same power of disposition over their realty as *femmes sole*, but must be privily examined. (*See Descent and Distribution.*)

Interest. Legal rate, 6 per cent. Contract for more is void as to excess, and an instrument showing usury on its face can not be sued on.

Judgments. From court of record are a lien from date of rendition for one year on all lands then owned by defendant, and on after-acquired lands for one year after acquirement.

Limitations of Suits. Upon bonds, notes, accounts, and contracts generally, six years; judgments or decrees of courts of record and other cases not expressly provided for, ten years. Revivor: Acknowledgment, expressed willingness to pay or promise; part payment not in itself sufficient. All demands against administrators and executors must be presented or sued on in two years and six months, if a resident, and three years and six months if a non-resident. Continuous adverse possession of real estate for seven years, under color of title, makes a title. The neglect to institute suit at law, or in equity, for seven years after cause of action accrues bars action and gives possessory right.

Married Women. (*See Husband and Wife.*)

Mechanics' Lien for one year upon any ground upon which a house is constructed or repaired, or fixtures, etc., put in, in favor of the person doing the work. Covers the lands of married women. Benefit extends to any workman or furnisher of material giving notice to owner within thirty days after the completion of building, or his discharge, or the completion of his contract. Railroad contractor, sub-contractor, furnisher of material, and every one who does any valuable service, manual or professional, for railroad, shall have lien for one year; if within ninety days after work done or material furnished, written notice is given railroad company or owners. No mortgage or contract with construction company shall be superior to this lien.

Mortgages and deeds of trust take effect as to third parties only from registration. Can be foreclosed without intervention of court when power of sale is conferred in the instrument. Chattel mortgages are good as to the contracting parties without registration, but not as against purchasers without actual notice, and creditors. It is a felony for maker of registered mortgage of personal property to dispose of same with purpose of depriving beneficiary of same. Railroad can not make a mortgage which shall be superior to judgments for timbers furnished, or labor, or for damages done to persons or property in operation of road. Equity of redemption may be waived, in deed of trust, and on default realty may be sold thereunder by trustee, free therefrom, for cash or otherwise, due advertisement having been made. When mortgages foreclosed in court, property may be sold on credit of not less than six months nor more than two years, and in bar of all equity of redemption, personal security being required of vendee and lien being retained on land to secure purchase money. Otherwise mortgagor has two years to redeem.

Partnership. Limited partnership may be formed for transaction of any mercantile, mechanical, manufacturing, agricultural, or mining business in this State; but not for carrying on business of banking and insurance. The articles of copartnership must specify the name of the firm, and of each individual partner, and his place of residence, general nature of the business, amount of capital each partner has contributed to common stock, and the period at which partnership is to commence and terminate. Articles must be acknowledged by each partner and registered in every county where firm has a place of business. Terms of partnership must be published for six weeks, immediately after registration, in a newspaper, to be designated by register. At time of filing original articles for registration, an affidavit of a general partner must be filed in same office, stating that the sums specified in the articles to have been contributed by each partner to common stock, were actually and in good faith contributed and in cash. If all formalities are not complied with, or are violated, the special or limited partner will be liable as a general partner.

Power of Attorney. All powers of attorney authorizing the sale, conveyance, and transfer of real estate must be registered. Other powers of attorney may be registered. Can not be made by married women.

Protest. (*See Bills and Notes.*)

Taxes are a lien on the real estate on which they are levied, and as between vendor and vendee they are a lien from January 10th of the year for which they are assessed; as between the State, county, city and the owner, they are a lien for six years from January 10th of year for which they accrued, after which they are barred. Payable first Monday in October of the year they are assessed. After first Tuesday in February following, taxes bear interest, and distress warrants are issued for collection. Under the act of 1899, after the first Monday in July of the year after that for which the taxes are assessed, all real estate upon which taxes have not been paid may be sold at public auction to the highest bidder after advertisement by the County Trustee of the county in which the land lies. The delinquent taxpayer has two years from the date of sale in which to redeem the property by paying taxes, interest, cost, and penalties.

Wills. No will can convey an estate in lands unless written in testator's life-time and signed by him, or by some person in his presence by his direction, and subscribed in his presence by two witnesses at least, neither of whom is interested in the devise of said lands; but a paper writing purporting to be the will of the deceased person, written by him, having his name subscribed to it or inserted in some part of it, and found after his death among his valuable papers, or lodged in the hands of another for safe-keeping, shall be good and sufficient to give and convey lands, if the hand-writing is generally known by his acquaintances, and it is proved by at least three credible witnesses that they verily believe the writing, and that every part of it to be in his hand. Every devise shall convey the entire estate of the testator in lands unless the contrary plainly appears from the context. No nuncupative will shall be good where the estate exceeds $250, unless proved by two witnesses, disinterested, present at the making thereof, and unless some of them were especially requested to bear witness thereto by the testator himself, and unless it was made in his last sickness in his own habitation, dwelling house, or where he had been previously residing ten days at least, except he be surprised by sickness on a journey or from home and dies without returning to his dwelling, and such will must be proved within six months of the making thereof, unless it were put in writing within ten days, and it can not be proved until fourteen days after death of testator, nor until process has issued to call in the widow, or next of kin, or both, if conveniently to be found, to contest it. No written will shall be revoked or altered by a nuncupative will, except the same be reduced to writing in the life of the testator, and read over to him and approved, and unless the same be proved to have been so done by at least two witnesses capable to testify at common law. A married woman may dispose of any estate in the execution of a special power to that effect by will, and her signature should be made or the will be acknowledged by her in the presence of at least two witnesses, subscribing the will with their names in the presence of the testatrix. She may dispose of her separate estate by will, unless the power of such disposition is expressly withheld, in instrument under which she holds said estate. A valid testament of personalty may be made by a male infant of fourteen years of age, or a female infant of twelve.

SYNOPSIS OF THE LAWS OF TEXAS

RELATING TO

BANKING AND COMMERCIAL USAGES.

Accounts, How Sworn To. Open accounts, for purposes of suit, should have attached the affidavit of the plaintiff, his agent or attorney, that such account is, within the knowledge of affiant, just and true, that it is due, and that all just and lawful offsets, payments, and credits have been allowed. If made by agent or attorney, the affidavit should allege the fact. Such affidavit is prima facie evidence in all commercial accounts, unless denied under oath, but not in an isolated transaction based on special contract.

Acknowledgments of instruments for record may be made without the State, but within the United States, or Territories, before clerk of some court of record having a seal, commissioner of deeds for Texas, notary public; without the United States, before a minister, commissioner, or charge d'affaires, consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States, notary public; within the State, before a clerk of the district court, a judge or clerk of the county court, a notary public, in the county for which appointed. Acknowledgment should state:

Before me.....(giving name and character of officer) on this day personally appeared.....known to me to be the person whose name is subscribed to the foregoing instrument, and * he (or she) acknowledged to me that he (or she) executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this....day of....18..

[Seal.] [Name of officer and official character.]

For a married woman's acknowledgment proceed after * as follows: and known to me to be the wife of .....; and having been examined by me privily and apart from her said husband, and having the same fully explained to her, she, the said.....acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given, etc. (as above).

Actions. The distinction between law and equity proceedings does not exist in Texas. All forms of action are abolished. To compel defendant to appear at any term of the court he must have been cited ten days before the term begins. Service by publication not good except in proceedings *in rem.*, which by statute are made to include suits to determine the title to, or incumbrances upon, property within this State.

Administration of Estates. Letters testamentary or of administration may be granted within four years after the death of a party. They issue to persons who are qualified to act in the following order: 1. To the executor named in the will. 2. Surviving husband or wife. 3. Principal devisee or legatee. 4. Any other devisee or legatee. 5. Next of kin. 6. Creditor. 7. Person of good character residing in the county. The county court acts as a court of probate in all matters pertaining to estates of decedents, testate or intestate, and, unless the will dispenses with such supervision, administrators must furnish bond in double the amount of the estate. Surviving husband or wife qualifying as such must give bond in a sum equal to the value of the community estate.

Affidavits, within this State, may be made before a clerk of the district court, or judge or clerk of the county court, or a notary public, in the county for which appointed; without this State, and within the United States, before a clerk of a court of record having a seal, a notary public, commissioner of deeds for Texas; without the United States, before a notary public, minister, commissioner or charge d'affaires, consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States.

Aliens who become residents of Texas, and have declared their intention to become citizens of the United States, have all the property rights of citizens. Aliens who owned real estate prior to July 12, 1892, have the same property rights as are accorded to citizens of the United States by the laws or treaties of the Nation of which the alien is a citizen; this is also the case as to lands acquired since July 12, 1892, which are situated in an incorporated or platted city, town, or village.

Aliens who are bona fide residents of Texas may, during such residence, own lands the same as citizens.

Non-resident aliens who, since July 12, 1892, acquire lands not in an incorporated or platted city, town, or village, must bona fide dispose of the same within ten years from their acquisition; if this is not done the lands are subject to escheat to the State.

Aliens may acquire title to lands, or an interest therein, in the ordinary course of justice, or acquire and enforce liens, or lend money upon real estate.

Appeals to the supreme and appellate courts for delay will be affirmed, with 10 per cent on the amount in dispute, as damages, together with interest and costs.

Arbitration. The statutes provide for arbitration, the award made in such cases, if the proceeding was in compliance with the statutes, becomes the judgment of the court in which it is filed.

Arrest. The Texas laws do not authorize an arrest in civil matters, except for contempt of court.

Assignments and Insolvency. (*See Insolvent and Assignment Laws.*)

Attachments issue, on bond in double amount of debt being given, and affidavit of plaintiff that defendant is justly indebted to plaintiff, and the amount of the demand; that attachment is not sued out for purpose of injuring or harassing defendant; that plaintiff will probably lose his debt unless such attachment is issued; and stating, further, either of following grounds, that the defendant 1. Is not a resident of the State, or is a foreign corporation, or is acting as such. 2. Is about to remove permanently out of the State, and has refused to pay or secure the debt due the plaintiff. 3. Secretes himself so that the ordinary process of law can not be served on him. 4. Has secreted his property for the purpose of defrauding his creditors. 5. Is about to secrete his property for the purpose of defrauding his creditors. 6. Is about to remove his property out of the State, without leaving sufficient remaining for the payment of his debts. 7. Is about to remove his property, or a part thereof, out of the county where the suit is brought, with intent to defraud his creditors. 8. Has disposed of his property, in whole or in part, with intent to defraud his creditors. 9. Is about to dispose of his property with intent to defraud his creditors. 10. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors. 11. That the debt is due for property obtained under false pretenses. Suit for damages growing out of attachment proceedings may be brought in any county from which the writ issued, or where the levy was made in whole or in part. This gives the debtor the option of place of trial. No attachment shall issue until suit has been instituted, but it may issue at the commencement of the suit, or at any time during its progress. It may issue before plaintiff's debt is due, but no final judgment shall be rendered against defendant until the debt becomes due. The defendant may replevy property attached by giving bond, with two sureties, in double the amount of the debt, or double the value of the property replevied, as estimated by the officers. The priority of attachment liens exists as at common law, except that a levy on land must be registered with the county clerk.

Writs of garnishment may also issue on application and affidavit of plaintiff, his agent or attorney, to persons owing defendant, or holding effects of his in possession, or corporations in which the defendant is a stockholder. If sued out before judgment, bond in double amount of debt is required; if after judgment, no bond required. Said affidavit shall state that the amount claimed is just, due, and unpaid, and that affiant does not know of property of defendant in this State subject to execution sufficient to satisfy the debt, and that he has reason to believe, and does believe, the garnishee (naming him) is indebted to, or has property or effects of, the defendant, and that the garnishment is not sued out to injure garnishee or defendant. Final judgment must be rendered against defendant before judgment can be had against the garnishee. When debt is not due writ of garnishment can issue only when writ of attachment has been issued; in this case no bond is required for the writ of garnishment. In garnishment, defendant may, before judgment, replevy whatever is garnisheed by filing bond with two good sureties, and may then make any defense which the garnishee could make in such suit. Proceeds of voluntary sale of homestead not subject to garnishment within six months after such sale.

Banks. The constitution of 1876 says: "No corporate body shall hereafter be created, renewed, or extended with banking or discounting privileges." There is no provision of law for the official examination of State banks, nor are such banks required to make any public statements of their condition or to make reports to any State official. A number of State banks chartered before the adoption of this provision of the constitution are still engaged in business.

By act of 1897, it is made a felony for any president, director, manager, cashier, or other officer of any bank or banking institution, or the owner, agent, or manager of any private bank or banking institution, or the officers, directors, or agents of any trust company doing business in Texas to receive or assent to the receipt of deposits of money or other valuable things after having knowledge of the insolvency of such institution.

Bills of Lading. Common carriers are required, when they receive goods for transportation, to give the shipper, when it is demanded, a bill of lading stating the quantity, character, order, and condition of the goods; and such goods shall be delivered in the manner provided by common law in like order and condition to the consignee. Liability as at common law for damages. Bill of lading is prima facie evidence of ownership of goods in transit by the consignee. Carriers can not restrict their liability by any general or special notice, or by inserting exceptions in a bill of lading; and this rule is applied to a through bill. Bills of lading are negotiable paper.

Chattel Mortgages and Deeds of Trust of Personal Property, to be valid as to creditors, and as to purchasers without notice, must be accompanied by immediate delivery, followed by actual and continued change of possession of property, unless the same, or a true copy thereof, is filed in the county clerk's office of county where mortgagor resides, or if he is a non-resident of the State, then in the county where the property is situated. And all reservations of the title to chattels as security for the purchase money thereof are held to be chattel mortgages, and are, when possession is delivered to the vendee, void as to creditors and bona fide purchasers, unless such reservation be in writing, and filed as required for chattel mortgages. Mortgages are held to be mere security for the debt, and must be enforced by sale of property, either through a decree of foreclosure or power of sale given in the mortgage; sale of property, upon death of mortgagor, must be enforced through probate court. Any lien attempted to be given on a stock of goods exposed to daily sale in the regular course of business, and contemplating continued possession and sale of the goods by the owner, is fraudulent and void. Chattel mortgage given to secure creditors is invalid against such creditors as do not accept under it.

Collaterals. Holder of claims as collateral security who fails to use due diligence to collect is liable for loss. Is not affected by limitation against the debt. After the death of the debtor the creditor may still collect the collaterals. Surety on principal debt is subrogated to rights of creditor as to collaterals. If, by negligence or design, the creditor loses the collateral, the surety on the principal debt is to that extent discharged. Note pledged as collateral can be held for no other debt. Taking collateral security does not extinguish original contract.

Contracts. No seal is required to be affixed to written contracts. An agreement to answer for the debt, default or miscarriage of another, or for the sale of real estate or the lease thereof for more than a year, or which is not to be performed within a year from the making thereof, must be in writing and signed by the person to be charged therewith.

Conveyances. The husband alone can convey his separate and the community real estate, not the homestead. Husband and wife must join in the conveyance of the wife's separate real estate or of the homestead, whether the seperate property of the husband or community, and the wife must, privily from her husband, acknowledge the execution of the instrument before a proper officer in the manner pointed out by statute. (*See Acknowledgments.*)

Corporations. The act regarding private corporations was materially amended by the Legislature of 1895. The purposes for which private corporations may be formed, as set out in the statute, cover almost the entire range of business enterprise. Subdivision 4 of the statute authorizes incorporation for "the purchase and sale of goods, wares, and merchandise, and agricultural and farm products;" and subdivision 25 for the purpose of buying and selling goods, wares, and merchandise of any description by wholesale or by wholesale and retail combined, provided the capital stock in such company is not less than $20,000, and the wholesale and retail business are not separated. Private banking corporations are prohibited. A statute approved March 24, 1893, provides that no corpo-

ration whose main business is to acquire real estate shall be permitted to acquire any land in this State after that date, and that all lands then held by them must be alienated within fifteen years from that time, and that other private corporations shall not acquire nor hold more land than is necessary to the transaction of their business, and if any surplus should be acquired in collection of debts it must be disposed of within fifteen years after such acquisition. Foreign corporations are required by the statutes to file copy of the charter with the secretary of State, with a fee of from $25 to $200, according to the capital stock. A franchise tax by amendment of 1897 is imposed as follows: For domestic corporations having an authorized capital stock of $50,000 and less than $100,000, $20; for domestic corporations having an authorized capital stock of $100,000 and less than $200,000, $30; for domestic corporations having an authorized capital stock of $200,000 or more, $50. For foreign corporations having an authorized capital stock of $25,000 or less, $25; for foreign corporations having an authorized capital stock of more than $25,000 and not exceeding $100,000, $100; and for foreign corporations having an authorized capital stock of over $100,000, $100, and $1 for each additional $10 000 above $100,000 and not exceeding $1,000,000; and if such authorized capital stock exceeds $1,000,000 then such corporation shall pay a still further additional tax of $1 for every $100,000 over and above $1,000,000. Sleeping, dining and palace car companies are required by this bill to pay an annual tax equivalent to 2½ per cent of their gross receipts on business done in the State.

Courts. There are two terms annually of the Federal circuit court at Dallas, Waco, Ft. Worth, Abilene, San Angelo, Galveston, Tyler, Jefferson, Paris, Beaumont, Brownsville, San Antonio, Austin, and El Paso. State courts with civil jurisdiction are justice courts in each precinct, jurisdiction $200 or less. No appeal in cases of $20 or less; above that, appeal to county court. County court in each county has general probate jurisdiction and exclusive jurisdiction from $200 to $500; from $500 to $1,000, concurrent jurisdiction with the district court. Appeals in probate matters to the district court; in all other civil appeals to the court of civil appeals. District court has concurrent jurisdiction with the county court over amounts from $500 to $1,000, exclusive jurisdiction over amounts above latter sum, and also of all suits involving title to land and slander and libel, irrespective of amounts. Appeal in civil matters to court of civil appeals. There are five courts of civil appeals, each in separate districts, to which all civil appeals from the district and county courts are taken. There is one supreme court sitting at Austin to which certain characters of cases can be brought from the courts of civil appeals by writ of error granted by the supreme court. In each county there must be as many as two terms of the district court each year, and in a number of more populous counties there are from four to seven terms each year. At least four sessions of the county court in each county must be held each year. In a number of the sparsely settled counties the civil jurisdiction of the county courts, except as to probate matters, has been transferred to the district court. Justices of the peace and clerks of the courts are required to file and docket all suits tendered, but can not be compelled to take any further action unless the costs are secured.

Days of Grace. Three are allowed on all bills of exchange and promissory notes assignable or negotiable by law. Note payable on demand is not entitled to days of grace. When a note is payable so many months after date, the note will become due on the day of the month corresponding with the day of the date; that is, if it be dated on the tenth day of the month it will become due on the tenth, to which the days of grace are to be added. When a bill or note is payable a certain number of days after date, demand, or sight, the day of its date, etc., is excluded in computing time. Limitation does not commence to run on commercial paper until the expiration of three full days after the day of maturity.

Depositions. All witnesses' depositions may be taken. The deposition of a party to a suit, except where either party is a corporation, may be taken by the adverse party, ex parte, and without notice. To take the deposition of any other witness, it is necessary that the opposite party, or his attorney of record, shall be served with notice, stating name and residence of witness, together with copy of interrogatories, five days before the commission will issue. In taking the testimony the officer will make a caption, stating the name of the case, the appearance and residence of the witness, official title of the officer, etc., as is usual, and after swearing the witness, will proceed to take his answers to the several interrogatories and cross interrogatories separately, which being written must be "sworn to and subscribed before the officer by the witness" (naming him), to which fact the officer must certify under his hand and official seal. The deposition, with commission and interrogatories, must be sealed in an envelope, and the officer's name must be written officially across the seal. The envelope must have indorsed thereon the style of the suit and name of witness, and must be addressed to the clerk or justice issuing the commission. Usual transmission is by mail, and the postmaster or deputy postmaster of the sending office must indorse thereon that he received same from the hands of the officer.

Descent and Distribution of Property. Real, personal, or mixed property, when deceased leaves no husband or wife, descends: To his children and their descendants; if none such exist, then to father and mother in equal portions; if only father or mother survive, then such survivor takes one half, and the other half goes to the brothers and sisters of deceased and their descendants; if none of the latter survive, the parent then living takes the whole; if neither parents, nor sisters or brothers or their descendants survive, then the estate goes in equal moieties to the paternal and maternal kindred, *i. e.*, to grandfather and grandmother of each side and their descendants; if one be dead and have no descendants, then the whole moiety to the survivor, and so on to the nearest lineal ancestors and their descendants. When deceased leaves husband or wife, the estate descends, when there are children, one-third of personal property and life estate in one-third of real estate to husband or wife, balance of personal and real estate, as well as remainder to child or children. If deceased leaves no child or children, husband or wife takes all personal and one-half of real estate, the other half goes to the father and mother, etc., under the general rule above as to descent, but surviving husband or wife takes all, in case neither father or mother, nor sister or brothers or their descendants survive. Community property goes entirely to surviving husband or wife, when there are no children or their descendants, but if there are such, the property goes one-half to surviving spouse and the other half to the children and their descendants.

Divorce. District court may annul marriage for natural or incurable impotency, or other impediment which made marriage void *ab initio;* and a divorce may be granted for cruelty, adultery, desertion for three years, or, under certain circumstances, upon conviction of either spouse for felony. Plaintiff must be a bona fide inhabitant of the State, and must have resided in the county where suit is brought for six months next preceding filing of suit. By act of 1897 husband and wife are competent witnesses, and either may testify for or against the other.

Dower. The right of dower does not exist in Texas.

Executions from district and county courts issue after adjournment, and may, on application of successful party, issue twenty days after judgment, if no supersedeas bond has been filed and approved; from justices' court, on the eleventh day after judgment; in all, upon plaintiff, his agent or attorney, making affidavit to certain facts, shall issue forthwith. No redemption of land sold under execution. "The time and place of making sale of real estate in execution shall be publicly advertised by the officer for at least twenty days successively next before the day of sale, by posting up written or printed notices thereof at three public places in the county, one of which shall be at the door of the courthouse of the county, and by delivering to the defendant in execution one copy of said notice of sale, whenever he resides in the county where the land is situated, and shall mail a similar notice to the attorney of record, if any, for such defendant in every case; and if such defendant resides out of the county where the land is situated, the officer shall mail to him a similar notice, directed to him at his post office, if known to such officer, and if his residence is not known and he has no attorney of record, the posting of the first three notices shall be sufficient; provided, that whenever real property shall be levied on by virtue of an execution, or shall be the subject of any order of sale or venditioni exponas, if the defendant shall, at any time prior to and not later than five days after receiving notice of the levy of any execution or issuance of order of sale or venditioni exponas, request the clerk or justice of the peace issuing such execution, order of sale or venditioni exponas, or the officer making the levy or holding the process, that notice of the sale be published in a newspaper, the same shall be so published, if there be a newspaper published in the county that will publish the same for the compensation allowed herein; when said request is filed the officer shall, under the provisions of this article, publish notice of the sale in a newspaper published in the county for three consecutive weeks. Said notice shall contain a statement of the authority by virtue of which the sale is to be made; the time of levy and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes." Judgment becomes dormant if execution be not issued thereon within twelve months.

Exemptions. By the constitution of 1876, the homestead of a family not in a town or city consists of 200 acres of land, which may be in one or more parcels, with improvements thereon. In a city, town, or village it consists of a lot or lots not to exceed $5,000 in value at the time of their designation as the homestead, exclusive of improvements, provided the same be used as a home, or as a place to exercise the calling or business of the head of a family. The homestead is protected from forced sale or incumbrance except for taxes, or for the purchase money, or for improvements thereon, and in this last case, only when the work and materials are contracted for in writing in advance, with the consent of the wife, given in same manner as required in making a sale of homestead. In case of death of the husband, the widow and children have one year's support from the estate, allowance therefor in no case to exceed $1,000, and if the property exempt by law does not exist in kind, a sufficiency of the estate may be sold for cash, to raise allowance for homestead, not to exceed $5,000, and for other exempt property not to exceed $500. All household and kitchen furniture, all implements of husbandry, all tools and apparatus belonging to any trade or profession, all books, five milch-cows and calves, two yoke of work oxen, two horses and one wagon, one carriage or buggy, twenty hogs, twenty sheep, all provisions and forage on hand for home consumption, current wages for personal services, and sundry other articles, are also exempt property for every family. And to every citizen not the head of a family one horse, bridle, and saddle; all wearing apparel; any lot or lots in a cemetery for sepulture; all tools, apparatus, and books belonging to his trade, profession, or private library. Current wages for personal services are not subject to garnishment. Exempt personal property may be made subject to valid liens, by contract.

Fraud. Every gift, conveyance, assignment, transfer of, or charge upon any real or personal property, or suit commenced, decree, judgment, or execution suffered or obtained, and every bond or other writing given with intent to delay, hinder, or defraud creditors, purchasers, etc., is void as to them, excepting as against innocent purchasers for value without notice. Gifts, conveyances, etc., not upon valuable consideration, are void as to then existing creditors, unless debtor had then enough additional property subject to execution to pay his debts existing at that time.

Futures, Dealings in, with no intention of actual delivery, made a misdemeanor.

Garnishment. (*See Attachments.*)

Holidays. January 1st, February 22d, March 2d, April 21st, July 4th, first Monday in September, December 25th, all days appointed by the president of the United States or governor of Texas as days of fasting or thanksgiving, and the days on which an election is held throughout the State are holidays, which shall be treated as Sundays for the purpose of presenting for payment or acceptance, and protesting and giving notice of dishonor of negotiable paper, instituting suits and serving process in civil cases, except in attachments. If any of said days falls on Sunday, the next day thereafter is holiday. No civil suit shall be commenced, nor shall any process be issued or served on Sunday or any legal holiday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceeding.

Husband and Wife. All property owned by either spouse before marriage, or afterward acquired by gift, devise or descent, constitutes his or her respective separate property. All property acquired during coverture by either husband or wife (except property acquired by gift, devise or descent) is community property.

Debt incurred by the wife will not bind her separate estate unless by contract for necessaries for self or children, and for expenses incurred in behalf of her separate estate; but she may, by complying with statutory forms, mortgage her property to secure the husband's debt.

Insolvent and Assignment Laws. The statute provides for a general assignment by an insolvent debtor. The assignee must, within thirty days, give notice to all the creditors. Creditors to share in the benefits must accept within four months, and file with the assignee verified statement of their claims within six months. Moneys must be distributed by the assignee whenever he has as much as 10 per cent of all properly proven claims on hand after paying expenses. Assignee must file sworn report with the county clerk, and any opposition to this report must be filed within twelve months after filing. Preferences not allowed. No discharge of debtor unless the estate pays as much as 33⅓ per cent to all accepting creditors.

Interest. Legal, 6 per cent; conventional up to 10 per cent. Open accounts, no rate agreed upon, legal interest from January 1st thereafter.

Judgments bear rate stipulated in contract sued upon, and 6 per cent when none stipulated for. Usury forfeits all interest. Where usurious interest has been paid, double the amount may be recovered by suit within two years.

Judgment Lien. In federal, district, county, and justice courts a judgment is a lien on debtor's real estate in any county where an abstract of judgment shall be filed and recorded in a book kept for that purpose, in the office of county court clerk and properly indexed and cross-indexed in the name of each plaintiff and defendant. Lien takes effect from date of record and index of abstract, and continues for ten years, unless plaintiff fails to have execution issued within twelve months after judgment. A transfer of a judgment when acknowledged, as required for deeds, filed with the clerk of court in which recovered and by him noted in the minute book of the court, is constructive notice to, and valid and binding on, all persons subsequently dealing with reference to the cause of action or judgment.

Liens. Exempt property, excepting homestead, and all other property is subject to lien by contract, saving a stock of goods daily exposed to sale where change of possession is not contemplated. The homestead is subject, however, to lien for taxes, vendor's lien, and mechanic's lien, if the latter is fixed by prior contract and wife's separate acknowledgment thereof. The statutes provide further for mechanic's liens, for liens in favor of hotel and boarding-house keepers, and for liens on vessels.

Limitation to Suits. Written contracts, four years; accounts, other than open accounts between merchant and merchant, their factors and agents, two years. Mortgage lien barred with the debt, unless power of sale is given in mortgage, but new promise which revives debt, and which must be in writing, revives mortgage. Limitation must be pleaded. Does not run during period of absence of debtor from State, nor against minors, married women, and persons non compos.

Married Women can not bind themselves, nor their separate estate, by making, drawing, accepting, or indorsing negotiable instruments. Her separate estate is not liable for husband's debts; nor for her own contracts, except for expenses incurred for its benefit, or for necessaries for herself and children, though she may encumber it for debt of her husband by complying with statutory forms. Property owned by wife before marriage, or acquired afterwards by gift, devise, or descent, remains her separate property. That acquired after marriage, except as above, or by sale or exchange of separate property, is community property, as is also the increase of any of the wife's separate property, as rents, crops, increase of cattle, interest on notes, etc. A married woman can not contract as a partner in business, nor embark her separate means in trade.

Mortgages. No mortgage or other voluntary incumbrance of the homestead, except for labor or material used in its improvement (as to which see exemptions and liens *supra*), is valid.

Notes and Bills of Exchange. Commercial paper is anything that is recognized as such by the law merchant, and it is not required that it shall be payable at a bank or any fixed place in the State. Unless otherwise provided in the paper, it will be considered payable at the residence of the maker or acceptor, or other person bound. The liability of any drawer or indorser may be fixed by instituting suit against the acceptor or maker, before first term of district or county court, to which suit can be brought, or before second term, showing good cause why not brought at first term; within jurisdiction of justice, suit must be brought within sixty days. Protest: Such liability may also be fixed by protest, according to the custom of merchants. The holder of a protested draft or bill, drawn by a merchant in this State, upon his agent or factor without the State, may recover 10 per cent damages thereon, besides interest and costs. Days of grace (three) allowed on all negotiable instruments, except paper payable on demand. Attorney's fees may be stipulated for in note and recovered in case of suit. If Monday be a holiday, negotiable paper may be presented for payment or acceptance on the Saturday preceding such holiday. Paper falling due on Sunday, or a holiday, must be presented for payment or acceptance on Saturday or the day preceding such holiday. When third day of grace falls on Sunday or a legal holiday, the paper is due on the preceding day.

Powers of Attorney if intended to effect title to real property, should be acknowledged and recorded like a deed to real estate. Revocation should be made in the same way.

Private Seals. Abolished February 2, 1858, except as to private corporations.

Promissory Notes. (*See Notes and Bills of Exchange.*)

Protest. The holder of any bill of exchange or promissory note, assignable or negotiable by the law merchant, may also secure and fix the liability of any drawer or endorser of such bill of exchange or promissory note for the payment thereof, without suit against the acceptor, drawer, or maker, by procuring such bill or note to be regularly protested by a notary public for non-acceptance or non-payment, and giving notice of such protest to such drawer or indorser according to the usage and custom of merchants.

Suits, Where Brought. The rule is that a resident of the State should be sued in the county in which he may reside, but there are numerous exceptions, among them being suits brought on written contracts, providing where they are to be performed—which may be brought either in the county of the defendant's residence or where the performance is agreed to be made. Thus, a note payable at Austin may be sued on in Travis County, though defendant reside in another county. This enables parties to concentrate their collections.

Taxes. Non-residents may pay State and county taxes to the comptroller of the State, at Austin, on or before December 31st next after assessment. Taxes are a lien upon land until paid. Taxes become delinquent, and forced collections of same begin on and after 1st day of January next succeeding the year for which they are assessed. Owner has two years within which to redeem land sold for taxes, by paying to purchaser double the amount paid for the land.

Transfer of Corporation Stocks. Such stock is transferable only on the books of the corporation in such manner as the by-laws may direct.

Wills. All adult persons of sound mind may dispose of their property, real and personal, as they choose. A will must be signed by the testator himself, or in his presence, by his direction, and, unless wholly written by himself, signed by two witnesses in his presence. Application for the probate of a will must be made to the county court of the proper county within four years from the date of the death of the person making it. A will which has been probated in another State or country can be probated here. A duly certified copy of such will may be filed and recorded, and have the same effect as the original will, if probated here. Real estate can not be devised by a nuncupative will.

SYNOPSIS OF THE LAWS OF UTAH

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MESSRS. BOOTH, LEE & RITCHIE, Attorneys at Law, Salt Lake City. (*See Card in Attorneys' List.*)

Acknowledgments. (*See Deeds.*)

Actions. There is but one form of civil action, but the distinction between law and equity cases in their nature is recognized in taking appeals to the supreme court, and where there is variance between the rules of equity and the rules of the common law in reference to the same matter, the rules of equity prevail. Civil actions are commenced in the district court by filing a written complaint in the proper court or by the service of summons. If commenced by summons, which is signed by plaintiff's attorney, the complaint must be filed in court within ten days after service. Summons may be served by an officer or any person over twenty-one, not a party, but in justice court summons must be issued by the justice and must be served by an officer. It is served by leaving a copy with the defendant, or some person over the age of fourteen years, at his residence. The statute, however, provides for service by publication in cases where lien is created by attachment or existing otherwise Actions must be prosecuted in the name of the real party in interest, except that an executor or administrator, or a trustee, or a person with whom the contract has been made for the benefit of another, may sue in his own name. Actions must be commenced in the county where the cause of action arises. Actions concern ng real property must be commenced in the county where the real estate, or some part thereof, is situated. The court may, on motion, change the place of trial: 1. When the county designated in the complaint is not the proper county. 2. When there is reason to believe that an impartial trial can not be had therein. 3. When the convenience of witnesses and the ends of justice would be promoted by the change, and when the judge is disqualified from acting. Any person who has an interest in the matter in litigation may become a party to the suit by filing complaint in intervention, and the court may also order new parties when the ends of justice require it.

Administration of Decedents' Estates. Letters testamentary and of administration are granted by the district court of the proper county. Applicants for letters of administration are entitled thereto, other things being equal, in the following order: 1. The surviving husband or wife, or some competent person whom he or she may request to have appointed. 2. The children. 3. The father or mother. 4. Brothers or sisters. 5. The grandchildren. 6. The next of kin. 7. The creditors. 8. Any other competent person. A surviving partner can not be appointed administrator of his deceased partner's estate. Administrators are required to give bonds with sureties. Debts of decedent are paid in the following order: 1. Funeral expenses, the expenses of the last sickness, and the allowance to decedent's family. 2. Wages of decedent's employees for services rendered within sixty days of death, not exceeding $100 each. 3. Debts preferred by law. 4. Liens on the homestead. 5. Other liens on decedent's property. 6. All other demands against the estate. (*See Claims Against Estates of Deceased Persons.*)

Affidavits. An affidavit, to be used before any court, judge, or officer of this State, may be taken before any judge, or clerk of any court, or any justice of the peace or notary public in this State. An affidavit taken in any other State or Territory of the United States, to be used in this State, may be taken before a commissioner, appointed by the governor of this State to take affidavits and depositions in such other State or Territory, or before any notary public in another State or Territory, or before any judge or clerk of a court of record having a seal. An affidavit taken in a foreign country, to be used in this State, may be taken before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal in such foreign country. When an affidavit is taken before a judge or a court in another State or Territory, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court under the seal thereof.

Aliens have same rights as citizens. (*See Foreign Corporations; Costs.*)

Appeals may be taken from judgments rendered by justices of the peace to the district court within thirty days after the rendition of the judgment. Undertaking with sureties must be given in the sum of $100 for payment of costs on appeal, or, if a stay of execution be claimed, in a sum double the amount of the judgment, including costs. In actions commenced in the district court from all final judgments, there is a right of appeal to the supreme court. In equity the appeal may be on questions of both law and fact; in cases at law the appeal shall be on questions of law alone. Appeals lie also from the final orders and decrees of the district court in the administration of estates of decedents and in matters of guardianship. An appeal must be taken within six months from the entry of the judgment or order appealed from. There is no appeal to the supreme court from judgment of district court on cases appealed from justice court, except in cases involving the validity or constitutionality of a statute. The undertaking must be executed on the part of the appellant by two sureties for damages and costs not exceeding $300, or, if stay of execution be desired, the undertaking must be in double the amount of the judgment appealed from.

Arrest. No person shall be arrested in a civil action except an absconding debtor. When the affidavit to obtain the order is not sworn to positively but on information and belief, it must state the facts upon which the information and belief are founded. Before making the order the judge must require a written undertaking of not less than $500.

Assignment for the Benefit of Creditors. Any insolvent debtor may execute a deed of assignment for the benefit of his creditors, provided that all debts due for wages or personal services of servant or employés of the assignor for one year previous to the assignment are preferred claims and must be paid first. Preferences can be given in deed of assignment if bona fide. Joint debtors can prefer out of their joint property only, and individual debtors can prefer out of their individual property. The deed of assignment shall set forth the name of the assignor, his residence and business; the name of the assignee, his residence and business, and generally describe the property assigned, with its location, and the purposes of the assignment; each shall be executed and acknowledged in the manner of deeds, and recorded in the office of the recorder of the county where the property is located. The assignor shall annex to such deed of assignment an inventory under oath, of all his estate; and a list of his creditors and the amount of their respective demands; failure to do so does not render

assignment void; the assignment having conveyed all the property belonging to the assignor, except property exempt from execution and insurance upon the life of the assignor; the exempt property and insurance can be conveyed, however, in the deed. As soon as the instrument is recorded it shall be filed, with an inventory and list of creditors, in the office of the clerk of the district court of the county where the property is located. The assignee shall forthwith file with the clerk a true inventory of said estate under oath, and shall enter into bond to the State for the use of the creditors in double the amount of the assigned property, to be approved by the clerk. The assignee shall give notice of such assignment by publication in a newspaper in the county, if there be one, at least once a week for six weeks, and shall mail a notice to each creditor, requiring him to present his claim in three months thereafter, under oath. The claims presented must be sworn to by the claimant, or by some person acquainted with the facts; and shall be filed with the assignee within three months of the date of the first publication, unless the court extends such time, which it may do in its discretion, but in no case shall such extended time exceed nine months. At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list of such creditors with a statement of their claims, an affidavit of the publication of the notice, and a list of all creditors. Any person may contest any claim or demand of any creditor by written exceptions thereto filed with the clerk, and any creditor whose claim is contested must be served with a notice returnable not less than ten nor more than forty days, at which time the court shall hear the case and render judgment. If no exception is made to any claim, the court shall order the assignee to make from time to time fair and equal dividends among the creditors. The assignee is subject at all times to the order of the court. The assignee may be removed upon an application of a majority of the creditors in amount, and a person approved by the creditors may be appointed by the court. An assignee is allowed the same compensation as an executor for like services. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases: 1. If it give a preference dependent upon any condition or contingency, or with any power of revocation reserved. 2. If it tend to coerce any creditor to release or compromise his demand. 3. If it provide for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor. 4. If it reserve any interest in the assigned property or any part thereof to the assignor, or for his benefit, before all his existing debts are paid. 5. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust; provided, that the assignment may provide reasonable terms and manner of sale to be carried out only so far as practicable and not prejudicial to the interest of the estate, in the discretion of the court.

Assignments. Statute provides that in case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off or other defense existing at the time of or before notice of the assignment. This does not, however, apply to a negotiable instrument transferred in good faith and upon good consideration before maturity.

Attachment may issue on any day in an action upon a contract or judgment which is not secured by mortgage, lien, or pledge, upon real or personal property situated in this State, or if so secured, after the security has, without any act of the plaintiff or the person to whom the security was given, become valueless, against a non-resident defendant, or against a defendant who has departed or is about to depart from the State to the injury of his creditors, or who stands in defiance of an officer or conceals himself so that process can not be served on him, or has disposed of, or is about to dispose of, his property with intent to defraud his creditors, or who has fraudulently contracted the debt or incurred the obligation respecting which the action is brought. Process issued by clerk on receipt of affidavit made by or on behalf of plaintiff, and on the filing of an undertaking on the part of the plaintiff with sufficient sureties in a sum not less than $200 in district court and $50 in justice court and not less than the claim.

Banks. Corporations to conduct commercial and savings banks, or banks having departments for both classes of business, may be formed by any number of persons not less than five, at least one of whom shall be a resident of this State. The capital stock shall not exceed $1,000,000, nor shall the subscribed capital stock of any bank be less than $25,000, and in cities having from 10,000 to 20,000 inhabitants not less than $50,000, and in cities of 50,000 inhabitants and upward, not less than $100,000; nor shall the certificate of incorporation issue until it shall appear to the Secretary of State, by affidavit of at least three of the incorporators, that the requisite amount has been subscribed, and that at least 25 per cent of the stock subscribed by each stockholder, and not less than 25 per cent of the stock of the corporation has been paid in cash. The unpaid subscriptions of the stockholders shall be paid in cash installments of not less than 10 per cent per month until fully paid. The stock of any shareholder failing to pay an installment, after two weeks' notice in a newspaper, may be sold at auction. If such stock will not bring the amount due thereon, the amount previously paid shall be forfeited to the corporation, and may be sold within six months, or, if not sold, canceled and deducted from the capital stock of the association, and if said reduction shall reduce the capital stock below the minimum, it shall, within thirty days from the date of cancellation, be increased to the required amount; in default of which a receiver shall be appointed, on the application of the Attorney General, to close up the business of the bank. Every bank shall, at all times, have on hand, as a reserve, in available funds, 15 per cent of its commercial deposits and liabilities payable on demand. In cities of 25,000 population, or more, the reserve shall be 20 per cent. The reserve of savings deposits must be at least 10 per cent. Failure to make good the reserve within thirty days after notice from the Secretary of State is cause for the appointment of a receiver. No officer shall borrow to exceed one-tenth of the capital stock actually paid in, nor to exceed $10,000, nor for more than three months, nor on stock of the association as security, nor shall any officer become endorser or security for loans to others. No loan shall be made to any person for more than 15 per cent of the capital stock paid in. Stockholders are liable individually for an amount equal to their stock additionally thereto for corporation debts. Private bankers are those who, without being incorporated, carry on the business of banking, and must have a paid-up capital of $10,000; in cities of 5,000 to 10,000 inhabitants, at least $15,000; in cities of 10,000 to 20,000 inhabitants, at least $25,000; in cities of 20,000 inhabitants and upward, at least $50,000. At least one person interested must file with the Secretary of State and the county clerk, before the business begins, a sworn statement giving the names and post-office addresses of all persons interested in the business, with the nature and extent of their interest, amount of capital, name in which and place where the business is to be carried on. Every bank, corporate or private, shall make a report at least four times a year to the Secretary of State, according to the form prescribed by him and verified, stating the condition of the bank at the close of business at any past day, within three months before the date of the call, specified by the Secretary of State, and shall be transmitted to his office within five days, a copy of which, certified to by the Secretary of State, shall be published in a newspaper. The Secretary of State may call for special reports whenever his judgment thinks it necessary. A bank refusing to report is subject to a penalty of $50 for each day's delay. Every officer of a bank who knowingly overdraws his account is guilty of a misdemeanor. Every officer, agent, or clerk of any bank or banker receiving deposits, knowing that such bank or banker is insolvent, is guilty of a misdemeanor. To actions brought to recover money or other property deposited with any bank or banker, trust company, or savings association, there is no limitation.

Bills of Lading. No statutory provisions.

Chattel Mortgages to be valid as against third parties must be accompanied with delivery of the chattel to the mortgagee, or the mortgage must provide that the chattel may remain in the possession of the mortgagor. Parties must attach an affidavit that it is made in good faith to secure the amount named therein and without any design to hinder or delay the creditors of the mortgagor. It need not be acknowledged, but must be filed with the county recorder. It need not be recorded. It may be foreclosed by action or by advertisement. In the latter case the sale may be enjoined if it appear by affidavit that the mortgagor has a legal counterclaim or any other valid defense to all or part of the amount claimed by the mortgagee, and all further proceedings of foreclosure must be had in a district court. Failure to discharge, when satisfied, renders the mortgagee liable to a penalty of $50 and all actual damages. A chattel mortgage is void after one year from the filing, unless, within thirty days next preceding the expiration of one year from such filing, and of each year thereafter, the mortgagee, his agent, or attorney shall make an affidavit exhibiting the interests of the mortgagee, showing the amount then due; but no mortgage is good longer than five years from the original filing. No mortgage of exempt personal property is valid unless executed by both husband and wife.

Claims Against Estates of Deceased Persons. (*See Administration.*) Notice must be published by every executor or administrator to creditors to exhibit their claims within ten months after the first publication if the estate exceeds $10,000 in value, and within four months if less in value. All claims arising upon contracts must be presented within the time limited in the notice, and must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no off-sets to the same to the knowledge of the affiant. Claims are barred if not so presented. If the claim be not due or be contingent, the particulars must be stated. When the affidavit is made by some person other than the claimant, the reason why the claimant does not make it must be stated.

Conditional Sales. There is no statute on the subject. The supreme court has held that a conditional sale is good and valid as well against third persons as against parties to the transaction, and that such bailee of personal property or conditional purchaser can not convey the title or subject it to execution for his own debts until the condition on which the agreement to sell was made has been performed.

Consignments. There is no statutory law regulating.

Corporations. Corporations may be formed by any number of persons not less than five, at least one of whom must be a resident of the State. They shall enter into an agreement in writing, signed by each of them and acknowledged by at least three of their number before any notary public of the county in which they shall have their principal place of business; said agreement must state the name of the association, the name and place of residence of each incorporator in full, and the time of duration of such corporation, which shall not be less than three nor more than fifty years. It must further state the pursuit or business agreed upon, the place of its general business, the amount of stock each subscriber has subscribed, the amount of each share, and the limit of capital stock agreed upon, the number and kind of officers of the association, with their qualification, terms of office, and manner of election; and how many of the entire board shall be necessary to form a quorum, and whether the private property of the stockholders shall be liable for its obligations, with such additional clauses as they may deem necessary for the conducting of the business of such corporation. To this there must be added the oath or affirmation of three or more of such incorporators to the effect that they have commenced or that it is their bona fide intention to commence and carry on the business mentioned in the agreement, and they believe each party has paid or is able and will pay the amount of stock subscribed for; said acknowledgment, however, can not be made until at least 10 per cent of the stock subscribed for by each shareholder, and of the capital stock of the corporation, has been paid in. In cases where the amount of such capital stock consists of the aggregate valuation of property for the working, development, management, use, sale, or exchange of which such corporation shall be formed, no actual subscription of money is necessary, but each owner of such property shall be deemed to have subscribed an amount as will represent the fair estimated cash value of such property, the title to which he shall convey to such corporation. When such subscription is paid in property other than money, the fact must be stated in the articles of incorporation, also the kind of property, with a description thereof, which statement, except in the case of corporations organized for mining or irrigating purposes, shall be supplemented by the affidavits of three persons to the effect that they are acquainted with said property, and that it is reasonably worth the amount in cash for which it was accepted by the corporation. The agreement, together with the oath above stated, must be deposited with the clerk of the county in which the general business is to be carried on, and a copy of the same must be filed with the Secretary of State. The officers of such corporation must first subscribe an oath of office. Corporations so formed shall have general powers of such corporations. There are special provisions for the formation and regulation of railroads and also of benevolent corporations; also for the formation and regulation of telegraph, railroad, irrigation, insurance, building and loan, trust, and banking corporations.

Corporations, Foreign, doing business in this State are required to file with the Secretary of State and with the county clerk of the county wherein their principal office in the State is situated, certified copies of their articles and certificate of incorporation and by-laws, and shall by resolution of the board of directors accept the provisions of the constitution of this State, and shall also designate some person residing in the county in which its principal place of business in this State is situated, upon whom process may be served, which designation shall be filed with the county clerk of said county and the Secretary of State; service of summons upon such agent shall be deemed service upon the corporation. Any foreign corporation failing to comply with these provisions shall not be entitled to the benefit of the laws of this State relating to corporations. Any agent acting for a foreign corporation which has not complied with these provisions is guilty of a misdemeanor and is personally liable on contracts made by him for it.

Costs. Non-resident plaintiffs may be required to give security for costs.

Courts, Jurisdiction, Etc. The judicial power of this State is vested in a supreme court, district courts, and justices of the peace. The

supreme court is composed of a chief justice and two associate justices, who are elected for a term of six years each, hold three regular terms of court annually at the capitol of the State, Salt Lake City; said terms commencing on the second Mondays of February, May, and October. It has mainly appellate jurisdiction, with original jurisdiction in mandamus, certiorari, prohibition, and habeas corpus, and in some other cases. This State is divided into seven judicial districts, and every county in the State has a court held at least three times a year at its county seat. Each district is presided over by one of the district judges (except the third district, which has three judges), who are elected for a term of four years each. The district courts have general jurisdiction in all causes, civil, criminal, and probate, and appellate jurisdiction in all actions appealed from justices of the peace. The probate courts which formerly existed under the territorial government are abolished by the State constitution, and the district courts have now jurisdiction of all probate matters, and are always open for probate business. Justices of the peace are elected and have jurisdiction in civil actions where the amount in controversy is less than $200, except where the title to real estate is brought into question, or where the matter in dispute involves the validity of any tax, impost, toll, or municipal fine. They have also criminal jurisdiction in misdemeanors punishable by fine not exceeding $200 or imprisonment not exceeding six months in the county jail, or both, and are examining and committing magistrates for violation of State laws.

Deeds. Conveyance of real estate must be by deed, attested by at least one witness and acknowledged, to entitle same to be recorded. If acknowledged according to law, a deed or writing affecting real estate may be read as evidence without further proof. Acknowledgments may be made within the State before a judge or clerk of the court having a seal, a notary public, or county recorder of the county where the conveyance is executed and to be recorded. Elsewhere in the United States before a judge or clerk of any court having a seal, a notary public or a commissioner of deeds for Utah. Out of the United States before a judge or clerk of the court as aforesaid, a notary public, or any minister, commissioner, or consul of the United States appointed to reside in the country where the acknowledgment is taken. Such certificate, when properly executed by the officer authorized to take acknowledgments to instruments in writing affecting the title to real estate and attached to a conveyance, shall be sufficient acknowledgment, proof and certificate that such conveyance was executed as required by law. It is not necessary to use a private seal on any instrument in writing in this State. Statute prescribes a short form of deed that may be used.

Depositions. The testimony of witnesses may be taken within the State by deposition after service of summons or appearance in an action, or after issue of fact has arisen in special proceedings in the following cases: 1. When the witness is a party or a person for whose immediate benefit the action or proceedings is prosecuted or defended. 2. When the witness resides out of the county in which his testimony is to be used. 3. When he is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required. 4. When the witness is too infirm to attend the trial. 5. When the testimony is required on a motion, or in any other cases where the oral examination of the witness is not required. Depositions within the State may be taken before any judge or officer authorized to administer oaths, on serving upon the adverse party previous notice of the time and place of examination, with a copy of the affidavit showing a proper case in which to take depositions. The notice must be at least five days, adding, also, one day for every twenty-five miles distance between the residence of the person notified and the place of the examination, unless by order the judge prescribe a shorter time, in which case a copy of the order must be served with the notice. The testimony of a witness out of the State may be taken in an action at any time after the service of the summons or appearance of the defendant, on a commission issued from the court, under seal, upon an order of the judge or court, or justice of the peace, under his hand, on application of either party on five days' notice. If issued to any place within the United States it may be issued to any person agreed upon, or, if no person be agreed upon, to any judge or notary public or person named or commissioned by the officers issuing it. Depositions are principally taken on stipulation by the attorneys of the parties on written interrogatories and cross-interrogatories, before some notary public or other officer, waiving notice, commission and objections as to form of questions, such stipulation and copy being sent in with the interrogatories, direct and cross.

Descent and Distribution. (*See Succession.*)

[NOTE.—In lieu of the common law designation "Descent and Distribution" the civil law title of "Succession" is used in the Utah statutes.]

Distress for Rent does not exist in Utah. (*See Liens.*)

Divorce. Any person can bring an action for divorce who has been a resident of the county and State for one year, upon any of the following grounds: Impotency, adultery, desertion, neglect to provide common necessaries of life, habitual drunkenness, conviction of felony, and cruel treatment. The district courts have exclusive jurisdiction.

Dower is abolished. In lieu thereof the law provides that one-third in value of all the legal and equitable estates in real property possessed by the husband at any time during marriage, and of which the wife had made no relinquishment of her rights, shall be set apart as her property in fee simple if she survive him; provided, that the wife shall not be entitled to any interest in any such estate of which the husband has made a conveyance when the wife, at the time of the conveyance, is not, and never has been, a resident of Utah. Property so distributed is free from debts of the husband, except mechanic's lien for improvements on the same, lien for the purchase thereof, and for taxes. The value of the widow's share of the homestead is deducted from her distributive share.

Evidence. Parties may testify in their own behalf in both criminal and civil cases. As to husband and wife as witnesses, one spouse may testify for or against the other with that other's consent, not otherwise.

Executions. (*See Exemptions and Judgments.*) Execution may be issued immediately on entry of judgment. There is no stay, except by appeal. There is no right of redemption of personal property sold on execution. There can be a redemption of real estate sold on execution within six months.

Exemptions. The following personal property of any judgment debtor shall be exempt from levy and sale on execution: Chairs, tables, desk, to the value of $200; library belonging to the judgment debtor; also musical instruments in actual use in the family; also necessary household table and kitchen furniture belonging to the judgment debtor to the value of $300; one sewing machine, all family hanging pictures, oil paintings, and drawings, portraits and their necessary frames; all carpets in use; provisions actually provided for individual or family use sufficient for three months; two cows, with their sucking calves; two hogs, with all sucking pigs; all wearing apparel of every person or family; also all beds and bedding of every person or family. Provided, that if the judgment debtor be the head of a family consisting of five or more members, there shall be a further exemption of two cows and their sucking calves. The farming utensils or implements of husbandry of a farmer not exceeding in value the sum of $300; also two oxen or two horses, or two mules and their harness, one cart or wagon, and food for such oxen, horses, cows or mules for six months; also all seed, grain, or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of $200; crops, whether growing or harvested, and the proceeds thereof, not exceeding in value $300. The tools, tool chest, and implements of a mechanic or artisan necessary to carry on his trade, not exceeding in value the sum of $500; the notarial seal and records of a notary public; the instruments and chests of a surgeon, physician, surveyor and dentist necessary to the exercise of their profession, with their scientific and professional libraries, and law professional libraries and office furniture of attorneys, counsellors, and judges, and the libraries of ministers of the gospel, and the typewriting machine of a stenographer, writist, copyist, and reporter. The cabin or dwelling of a miner not exceeding in value the sum of $500; also his sluices, pipes, hose, windlass, derricks, pumps, cars, and tools not exceeding in value $500; two oxen, two horses or two mules and their harness, and a cart or wagon or dray or truck, by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living; and one horse, with vehicle and harness or other equipments used by a physician, surgeon, or minister of the gospel in making his professional visits, with hay and grain sufficient for such horse for six months. One-half of the earnings of the judgment debtor for his personal services, rendered at any time within sixty days next preceding the levy on execution; provided, that in no case, when the earnings are $1 a day or less, shall any part thereof be liable to execution or garnishment. All public property with the fixtures, furniture, books, papers appertaining thereto. No property is exempt from execution upon a judgment recovered for its purchase price, or on foreclosure of mortgage or mechanic's lien or laborer's lien, or exempt from sale for taxes. Non-residents have no exemptions. All real and personal estate belonging to a married woman in her own right, and all the rents and profits thereof, and all compensation for her personal services, are exempt from execution against her husband. All moneys growing out of life insurance on the life of judgment debtor; if the annual premium does not exceed $500. If the debtor be the head of a family, he is entitled also to a homestead of the value of $1,500 for himself and the further sum of $500 for his wife (if he has one), and $250 additional for each other member of his family.

Fraud. An action for relief on the ground of fraud can be brought within three years after discovery of the fraud. (*See Statute of Frauds.*)

Garnishment issuable with attachment or afterward. The writ of garnishment with interrogatories attached requires the garnishee to answer within ten days after service if in the county, twenty days if outside. Names of any number of garnishees may be inserted in one writ. Garnishee must answer in writing under oath. He is released by delivering the property or money to an officer. A default may be entered and judgment taken against him upon proof of his liability. If he answer denying liability, the plaintiff may join issue by reply. Such issue is tried and judgment rendered as upon other issues. Discharge of the garnishee does not bar action against him by the defendant for the same demand. Garnishment may be had after judgment, the procedure being substantially the same as the foregoing. New trials and appeals may be taken as in any other civil action.

Holidays. The following are holidays: Every Sunday, January 1, February 22, April 15 (Arbor Day), May 30, July 4, July 24 (Utah Pioneer Day), the first Monday in September, December 25, and Thanksgiving, and fast days as fixed by executive proclamation. Except the first, when any one falls on Sunday, the Monday following is a holiday.

Husband and Wife. (*See Married Women.*)

Interest. Legal rate is 8 per cent. Parties may agree, in writing, on any rate. No usury laws.

Judgment rendered in district court becomes a lien on all the real property of debtor within the county from time of docketing, and so continues for five years therefrom. Lien may be extended to counties of other districts by filing transcript of judgment with county recorder of such counties. Judgments may be revived by suit brought in eight years.

Liens. In all cases where the property of any company, corporation, or firm, seized by process of execution or attachment, and when business is suspended by action of creditors and put into the hands of a receiver or trustee, then the debts owing to laborers for work or labor performed in one year next preceding such seizure and transfer shall be treated as preferred, and such laborers and employés shall have a lien upon the property for the amount of such debt. Lessor shall have a lien for rent due upon the property of the lessees not exempt from execution as long as the lessee shall occupy the leased premises and for thirty days thereafter, which lien has priority over all others, excepting taxes, mortgages for purchase money, and liens of employés for services for six months next prior to the sale. It is enforced by attachment. Mechanics, material men, etc., performing labor upon or furnishing materials, etc., to be used in construction, alteration, etc., of any building, bridge, etc., have a lien thereof attaching to the interest of the owner or lessee in the land, etc., which lien takes precedence of every other incumbrance or lien attaching after the commencement of the work. Notice of intention to hold and claim lien must be filed in the office of the county recorder within sixty days after the completion of the contract in the case of original contractor; in every other case, within forty days after furnishing the last material or performing the last labor. Liens may be enforced within twelve months after completion of the original contract or suspension of work thereunder for thirty days.

Limitation of Actions. Within 4 years, an action upon a contract, obligation, or liability not founded upon an instrument of writing; also, on an open account for goods, wares and merchandise, and for any article charged in a store account, and after the last charge is made or the last payment is received. Within 6 years, contracts or obligations founded in writing. Within eight years, judgment or decree of any court of the United States, State, or Territory. Money deposited in bank no limitation for its recovery.

Married Women. (*See Exemptions.*) All property owned by a woman before her marriage, and that rightfully acquired afterward, with the profits thereof, is her separate property, and may be managed, or sold, or disposed of by her as if sole. There is no restriction, by reason of marriage, upon her property rights. She may contract and sue or be sued as if sole.

Mortgages (*see Chattel Mortgages*) of real estate must be acknowledged as deeds, and must be foreclosed by proceedings in equity. Every mortgage of personal property is void as against creditors or subsequent purchasers unless accompanied by an actual and continued change of possession to the mortgagee, or unless the mortgage provide that the property may remain in possession of mortgagor, and be accompanied by

affidavit of the parties that it is made in good faith to secure the amount named therein, and without any design to hinder or delay creditors.

Notes and Bills of Exchange are governed by statute. Chapter 83 of the laws of 1899, effective July 1, 1899, is the act recommended by the American Bar Association to secure a uniform law on this subject. All other acts are repealed. The law merchant governs in cases not provided for. This statute of 1899 is substantially the same as the act of New York relating to negotiable instruments. (See page 730 of this volume.) *(See Holidays.)*

Penal Code. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits knowing that said bank, or association, or banker is insolvent, is guilty of a felony. Every banker or person otherwise entrusted with, or having in his control, property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

Power of Attorney. Every power of attorney, or other instrument in writing containing the power to convey any real estate as agent or attorney for the owner thereof, to execute as agent or attorney for another any conveyance whereby any real estate is conveyed or may be effected, must be acknowledged, and certified, and recorded as other conveyances whereby real estate is conveyed or effected are required to be acknowledged, approved, certified, and recorded. Power of attorney can only be revoked by written revocation recorded in the same office as the power of attorney is recorded.

Protest. Mercantile paper must be protested on the day it falls due to hold endorsers, etc. No days of grace.

Redemption. *(See Mortgages, Trust Deeds, and Taxes.)*

Replevin. Personal property may be replevied by the owner or other person entitled to the possession of it, and must be by action in court. An affidavit must be made by the plaintiff, or some person on his behalf, showing: 1. That the plaintiff is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof. 2. That the property is wrongfully detained by the defendant. 3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief. 4. That it is not taken for a tax, assessment, or fine pursuant to statute, or seized under execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure. 5. The actual value of the property. The plaintiff or some one in his behalf must execute a bond in double the value of the property claimed, and if the defendant wishes to assert his right of possession, he can retain the property by giving like security.

Sales on Installment Plan. A lease of personal property may be made for a stipulated rent accompanied with an agreement to make title when a given sum is paid.

Statute of Frauds. Leases of real estate for more than one year, if not in writing, have the effect of leases at will only. Declarations of trust or assignments thereof in land must also be in writing except resulting and constructive trusts. No action can be maintained against an executor or administrator, to charge him personally for the debt of the decedent, nor to charge any defendant on the promise to pay the debt of another, unless the promise be in writing. Every agreement, that by its terms is not to be performed within a year, must be in writing. Every contract for the sale of chattels for the price of $300 or over, must have a memorandum thereof in writing, or the delivery of some earnest money or of some part or all of the thing sold. Every sale made by a vendor of goods or chattels in his possession, or under his control, unless the same be accompanied by a delivery within a reasonable time, and be followed by an actual and continued change of the possession of the things sold, is conclusive evidence of fraud, as against creditors or subsequent purchasers in good faith.

Succession. An intestate's estate goes, if there survive: 1. Husband or wife and one child, one-half to each; if more than one child, one-third to the husband or wife, the rest equally to the children. 2. If issue alone, all to the issue. 3. If no issue, all to the husband or wife up to $5,000, the excess one-half to husband or wife, the other half to the parents, and if both are dead, to brothers and sisters equally. 4. If neither issue, spouse, nor parents, to brothers and sisters. 5. If no issue, parents, brothers or sisters, all to the husband or wife. 6. If neither issue, spouse, parent, brother or sister, to the next of kin in equal degree, and if no kin then to the State for the school fund. Issue of children take according to right of representation except in certain cases. Illegitimate children inherit from the mother, and from the father when he acknowledges paternity. Issue of marriages null in law are legitimate. Children of bigamous or polygamous marriages born on or before January 4, 1896, are legitimate. Curtesy and dower are abolished, but the husband or wife surviving takes one-third of the estate of the other in fee.

Suits. *(See Actions.)*

Taxes. There is levied and directed to be collected an annual ad valorem tax on all taxable property in the State, as follows: Two mills on the dollar for State purposes; three mills for district school purposes; such sums as the county courts of the several counties may designate for district school purposes, not to exceed four mills on the dollar, and such sums as the county courts of the several counties may designate for county purposes, not to exceed five mills on the dollar. Debts are deducted from taxable credits. All property for purpose of State and county taxation is assessed and owned and valued on the first Monday in March in each year. Taxes attach to and constitute a lien on the property assessed, if real estate, from first Monday in February, and if personal property, from 12 o'clock noon of the first Monday of February and is a lien on the real property of owner. Real estate mortgages and trust deeds are taxable in this State. All State, school, and county taxes become due on the first Monday of September annually and become delinquent on the 15th day of November. The county collector is required to publish, on or before the first Monday of December in each year, for a period of ten days, in a newspaper of general circulation in the county, a delinquent tax list, and on the third Monday in December he shall expose for sale, in front of the county court house, sufficient real property of each of such delinquents, and sell the same to the highest bidder for cash, and continue to sell from day to day until such property is exhausted or the taxes have been paid with costs. Real estate sold for taxes may be redeemed at any time within four years after the date of the sale thereof by paying the amount paid by the purchaser, all costs, 50 cents for the redemption certificate, all taxes that have accrued since, together with interest at the rate of one and one-half per cent per month on whole from the date of sale to date of redemption.

Trust Deeds. Trust deeds executed after May 10, 1897, are subject to a redemption of six months from the date of sale by the judgment debtor: in making such redemption the judgment debtor must pay the debt in full and all costs and charges connected with the sale.

Wills. Any person over the age of 18, of sound mind, may dispose of his or her property, personal and real, by will. A will must be in writing, subscribed by the testator at the end thereof, in the presence of two witnesses, and the testator must, at the time of subscribing, declare to the witnesses that the instrument is his will, and must be attested by two witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request in his presence, and in the presence of each other. By express enactment of statute the word "writing" includes printing, and it is probable that typewriting would also be included. All wills executed according to the law of the State or country where made, or where testator was at the time domiciled, or in conformity to the laws of Utah, may be admitted to probate hereafter, being duly proved and allowed in any other State, Territory, or foreign state or country. Nuncupative wills are good, provided the estate bequeathed does not exceed in value the sum of $1,000, and provided the will be proved within six months after decedent's death by two witnesses who were present, one of whom was asked by testator to bear witness that such was his will, or to that effect. Such wills are only good in cases where testator was in expectation of immediate death from an injury or casualty happening within twenty-four hours previous to the making of the will. An holographic will, defined as one that is entirely written, dated and signed by the hand of the testator himself, need not be witnessed, and may be proved in the same way as other private writings.

SYNOPSIS OF THE LAWS OF VERMONT

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MESSRS. DILLINGHAM, HUSE & HOWLAND, Attorneys at Law, Montpelier. *(See Card in Attorneys' List.)*

Acknowledgments. All deeds must be signed and sealed in the presence of two witnesses. A scroll is not a sufficient seal. They may be acknowledged in this State before a justice of the peace, notary public, or master in chancery Outside the State, before a justice, notary public, or commissioner for Vermont, or any other officer authorized by the laws of such other State to take acknowledgments of deeds.

Administration of estates is conducted in the probate courts in the several probate districts.

Affidavits may be taken and oaths administered out of the State by commissioners appointed by the governor.

Appeals. *(See Courts.)*

Arrest. In actions *ex delicto* the defendant may be arrested for want of attachable property. In actions *ex contractu* no woman can be arrested. Nor can a resident citizen of any of the United States be arrested in an action *ex contractu* except upon the affidavit of the plaintiff, his agent or attorney, "that he has good reason to believe, and does believe, that the defendant is about to abscond or remove from the State, and has secreted property to an amount exceeding twenty dollars or sufficient to satisfy the demand upon which he is to be arrested," or upon the affidavit of the plaintiff "that the defendant is the receiver of money of the plaintiff in a fiduciary capacity which the defendant has not paid on demand, and that his action is instituted to recover the same."

Assignments and Insolvency. There is an insolvent law. The probate courts have jurisdiction in insolvency. All assignments must be for the benefit of all creditors. Non-resident creditors can prove their claims and take their dividends; but the discharge does not disturb the unproved claim of a non-resident creditor.

Attachment. The defendant's property, not exempt, may be attached on mesne process in serving the writ, and trustee process will reach goods, effects, or credits of defendant in the hands of a third party when the judgment, exclusive of costs, against defendant and the amount in the hands of trustee each exceed $10.

Banks. Banks of *Circulation, Discount, and Deposit* may be formed by voluntary association under the general law, but there are no such banks in existence.

Savings Banks, Savings Institutions, and Trust Companies are organized under special charters granted by the general assembly, but are regulated largely by general law. Savings banks have no capital stock, while the trust companies, though receiving savings deposits and usually denominated savings banks and trust companies, have a capital fixed by their charters, and the stockholders are individually liable, equally and ratably, for the companies' liabilities to the amount of the par value of their stock in addition to the amount invested in such stock. The treasurer of every savings institution and trust company is required, on or before the 10th of July of each year, to report to the inspector of finance, showing accurately its condition at the close of business on the 30th of June. This report is to include the amount and character of loans, an itemized statement of liabilities, and statement of expenses, amount of dividend declared, amount of deposits, number of depositors, and all other particulars relative to the condition of the institution. Investments of capital, deposits, and surplus may be made upon first mortgages of unencumbered real estate to an amount not exceeding three-fifths of the cash value of the property mortgaged; not less than one-sixth of the amount of such mortgages shall be upon real estate in Vermont, and not more than 70 per cent of the assets shall be invested in real estate mortgages; and not more than 50 per cent of such assets shall be invested in mortgages of real estate outside of Vermont. Loans on personal security shall only be made upon at least two approved names, not less than two of whom reside in Vermont, or within fifty miles of the institution making such an investment, such loans not to be for a longer time than one year, and not more than one third of an institution's assets to be invested in personal securities. With the foregoing exceptions, savings banks, saving institutions, and trust companies can only invest their funds in the public funds of the United States, or public funds for which the faith of the United States is pledged to provide for the payment of principal and interest; in the bonds or notes of the counties, cities, towns, villages, and school districts of the New England States, New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, and Iowa; in the stock of any National bank in the New England States and New York, and the cities of Detroit, Chicago, St. Paul, and Minneapolis; and in the stock of any banking association or trust company incorporated under the authority of, and located in this State; in the municipal bonds, not issued in aid of railroads, of the counties, cities and towns of 5,000 or more inhabitants in the States of New Jersey, Wisconsin, Minnesota and Missouri, and in the counties, cities and towns of 10,000 or more inhabitants in the States of Kansas, Nebraska, North Dakota, South Dakota, Oregon and Washington, provided that no investment shall be made in any of the counties, cities, or towns in the States aboved named, excepting in cities of 50,000 or more

Inhabitants where the municipal indebtedness of such county, city or town exceeds 5 per cent of its assessed valuation, and when not issued in aid of railroads; in the school bonds and independent school district bonds of New Jersey, Wisconsin, Minnesota, and Missouri, and in the school bonds and independent school district bonds of school districts of 2,000 or more inhabitants in the States of Kansas, Nebraska, North Dakota, South Dakota, Oregon, and Washington, where the amount of such bonds issued does not exceed 5 per cent of the assessed valuation of the respective cities, towns, and school districts; in the public funds of all the States named in this section; in notes with a pledge as collateral of any of the aforesaid securities, including deposit books or deposit receipts, issued by a savings bank, trust company, or banking association located in this State, such notes not to exceed the par value nor the market value of such collateral security; but no savings bank, savings institution or trust company shall hold, by way of investment or as security for loans, more than 10 per cent of the capital stock of any one bank, banking association or trust company, nor invest more than 10 per cent of its deposits, nor more than $35,000 in the capital stock of any one bank, banking association or trust company, and no investments shall be made in the capital stock of any such banks, banking association or trust companies, owned or loaned upon, to exceed in the aggregate one-fourth of the deposits of any savings bank or trust company. The capital of trust companies, and of savings banks and trust companies, is subject to the same laws of investment as their surplus and deposits.

Bills and Notes. (*See Notes and Bills.*)

Chattel Mortgages. All personal property is subject to mortgage. Mortgage must be recorded or possession changed to be valid. Mortgagor and mortgagee are required to subscribe to an affidavit that the debt secured is a just one.

Contracts. (*See Actions.*) Contracts based upon an illegal or immoral consideration are void.

Conveyances of real estate are to be by deed and recorded in the clerk's office in the town in which the land is situated. (*See Acknowledgments.*)

Corporations may be formed by five or more persons, by application to the secretary of State, for any purpose not repugnant to law and public policy, except telegraph, telephone, express, banking, insurance, railroads, savings banks, and trust companies, or for dealing in real estate. Clerk and two directors must reside in the State, and one-fourth of capital must be paid in before contracting debts.

Courts. The supreme court has appellate jurisdiction in suits in chancery; it has exclusive jurisdiction of certain statutory petitions not triable by jury; it may issue and determine writs of error, *certiorari*, *mandamus*, prohibition, and *quo warranto*; and may try and determine questions of law removed from the county court upon bills of exceptions. Court of chancery has general chancery jurisdiction. The county court has original and exclusive jurisdiction of all original civil actions not cognizable by a justice, and of certain statutory petitions; it has appellate jurisdiction in most cases cognizable by a justice where the matter in controversy exceeds twenty dollars and in some cases where it is less than that sum; and it also has appellate jurisdiction in cases in the probate court and in the court of insolvency.

Days of Grace. (*See Notes and Bills of Exchange.*)

Depositions may be taken in the State by justices of the peace, notaries public, masters in chancery, judges and registers of probate, and by commissioners of other States residing in this State. They may be taken out of the State by commissioners appointed by a supreme court judge, or by the governor, and by officers who are qualified to take depositions in other States.

Divorces, both absolute and from bed and board forever or for a limited time, may be granted by the county courts for the following causes: 1. For adultery in either party. 2. When either person is confined in State prison under sentence for three years or more. 3. For intolerable severity. 4. For three years' willful desertion or seven years' absence, if unheard of during that time. 5. On petition of the wife for wanton and cruel refusal or neglect to support, without cause, the husband having sufficient pecuniary or physical ability.

Dower. Widow is entitled to one-third in value of real estate of of deceased husband, unless barred in the manner specified in the statute by last will, by jointure, settlement, or when husband leaves no children or representatives of children; and when a widow is entitled to a homestead, her dower is diminished by an amount equal to it.

Executions. May be levied upon property not exempt from attachment. Personal property levied upon is sold by the officer at public auction. Real property is sold at public auction, but the debtor may redeem within six months. In cases in which the body is liable to arrest, the officer may for want of property take the debtor and commit him to jail.

Exemptions. Homestead, $500; necessary wearing apparel, household furniture and tools, one cow, one swine or meat of one swine, ten sheep, either one yoke of oxen or two horses (horses not to exceed in value the sum of $200), as the debtor may select, with forage for one winter, one sleigh, two sets of harness, two halters, and some other small articles. Ten cords of firewood or five tons of coal, twenty bushels of potatoes, the arms used by a soldier in the service of the United States, growing crops, ten bushels of grain, one barrel of flour, three swarms of bees and their produce in honey; 200 pounds of sugar, one sled or one set of trader's sleds, one tool-chest used by a mechanic, five poultry, not exceeding in value the sum of $10; one two-horse wagon or ox cart, as the debtor may select, with whiffletrees and neck-yoke, two chains, one plow. Also a sewing machine, and instruments and libraries of professional men to the value of $200.

Garnishment. Trustee process may be begun when the debt and the amount in the hands of the trustee each amount to $10.

Holidays. (*See Notes and Bills.*)

Interest. The legal rate is 6 per cent per annum. Judgments bear legal rate. Only the excess paid is forfeited, and that may be recovered back or set up in reduction of claim.

Judgments do not of themselves create a lien on property not attached upon mesne process.

Limitations of Suits. Simple promissory notes are barred in six years, but notes signed in presence of an attesting witness are not barred until fourteen years next after the right of action shall accrue thereon. Accounts are barred after six years from the last credit; sealed instruments and judgments, after eight years. A verbal promise to pay will not revive a debt, but the promise must be in writing signed by the party to be charged. A partial payment will revive the debt; but, in case of a note, the payment can not be shown by the indorsement of the payment alone unless in the handwriting of the party making the payment.

Married Woman. May dispose of property by will. May make contracts with any person other than her husband, and bind herself and her separate property, as if she was unmarried, and may sue and be sued as to such contracts made by her before or during coverture. But her husband must join in conveying her real estate, unless upon petition and cause shown permission is granted by court of chancery to convey by separate deed; and she can not become surety for his debts except by way of mortgage. All personal property and rights of action acquired by her before coverture, or during coverture, except by gift from her husband, are held to her separate use, and neither her separate property, nor the rents, issues, income, or products of it, are subject to the disposal of her husband or liable for his debts; but this provision does not authorize any claim by either husband or wife against the other for personal services. The husband is not liable for her torts unless committed by his authority or direction, nor liable for her debts contracted before the marriage, unless the marriage was before January 1, 1885.

Mortgages of real estate are foreclosed by bill or petition and writ of possession given after decree and failure to redeem. The usual time for redemption granted in the decree is one year, but it may be shortened upon cause shown. (*See Chattel Mortgages.*)

Notes and Bills of Exchange are due and payable on the day named therein, and no grace is allowed unless expressly stipulated in the instrument. Notes payable on demand are considered overdue after sixty days from date, and no presentment shall charge an indorser unless made on or before the last of said sixty days. Whenever any bill or note, draft or check, shall fall due on Sunday, the 1st day of January, the 22d day of February, 16th day of August, 4th day of July, 25th day of December, or the 30th day of May, called Decoration Day, or any day appointed by the governor or President as a day of fast or thanksgiving, the same shall, for purpose of presenting for acceptance or payment and for every purpose of protest and notice, be taken and considered as due on the next following business day. If any of these holidays fall on Sunday they shall be treated for banking purposes as if they had fallen on the previous Saturday, and notice, protest, etc. shall be given the following Monday.

Protest. (*See Notes and Bills.*)

Replevin. Replevin may be maintained for beasts distrained; for goods attached, and for the unlawful taking or detaining of goods.

Suits before the county court are brought in the county where plaintiff or defendant resides—if both are non-resident, then in any county. Actions of ejectment and trespass on the freehold must be brought in the county where the land lies, and actions of replevin where the goods are detained.

Taxes. Lands sold for taxes may be redeemed within one year on payment of the full sum for which they were sold, with legal costs and 12 per cent interest.

Wills. Every person of age and sound mind may dispose of his or her real and personal estate by will. The testator must sign in the presence of three witnesses, who must also sign in the presence of the testator and each other.

SYNOPSIS OF THE LAWS OF VIRGINIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by JAMES ALSTON CABELL, Attorney at Law, Richmond. (*See Card in Attorneys' List.*)

Accounts. In every action of assumpsit the plaintiff shall file with his declaration an account stating distinctly the several items of his claim, unless it be plainly described in the declaration. An open account sent for suit should be accompanied by affidavit showing that the same is due and payable, and if a partnership claim, the individual names of the partnership should be given.

Acknowledgments. The clerk of any court in which any deed, contract, or other writing is to be or may be recorded, shall admit the same to record in his office as to any person whose name is signed thereto, when it shall have been acknowledged by him or proved by two witnesses as to him before such clerk. Such court or clerk shall also admit any such writing to record as to any person whose name is signed thereto, upon a certificate of his acknowledgment before the said clerk, or a justice, a commissioner in chancery of a court of record, or a notary, within the United States, written on or annexed to the same, to the following effect, to-wit: "County (or corporation) of....., to-wit: I, ... , clerk of ... .court (or a justice of the peace or commissioner in chancery of the ....court, or notary public) for the county (or corporation) aforesaid, in the State (or territory or district) of ....., do certify that A. F. (or E. F. and G. H., etc.,) whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing the date on the.....day of....., has (or have) acknowledged the same before me, in my county (or corporation) aforesaid. Given under my hand this .....day of....." Or upon the certificate of acknowledgment of such person before any commissioner appointed by the governor, within the United States, so written or annexed, to the following effect, to-wit: "State (or territory or district) of ...., to-wit: I, ..., a commissioner appointed by the governor of the State of Virginia, for the said State (or territory or district) of..... ....., certify that E. F. (or E. F. and G. H., etc.,) whose name (or names) is (or are) signed to the writing above (or hereto annexed,) bearing date on the ..... day of ....., has (or have) acknowledged the same before me, in my State (or territory or district) aforesaid. Given under my hand this .... day of ...., Anno Domini....." Or upon the certificate of the clerk of any county or corporation court in this State, or of the clerk of any court out of this State, and within the United States, that the said writing was acknowledged by such person, or proved as to him by two witnesses before such clerk, or before the court of which he is a clerk, or upon certificate under the official seal of any ambassador, minister plenipotentiary, minister resident, charge d' affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or to the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate.

Actions. Actions or suits may be brought in any county or corporation. 1. Wherein any defendant resides. 2. If against a corporation, wherein principal office is, or wherein chief officer resides. 3. If to recover a loss under a policy of insurance, wherein the property insured was situated, or the person whose life was insured resided at the date of the policy. 4. If to recover land, or subject it to a debt, or it be against a non-resident or a foreign corporation having estate, real or personal, within this State, wherein such land or estate, or any part thereof may be. 5. If on behalf of the State, it may be in the city of Richmond. 6. If against certain State officers, it shall be only in the city of Richmond. 7. In adjoining circuit, when the judge of the proper court is interested in the case. Actions in force are ejectment, unlawful detainer, debt, covenant, trespass, detinue, trover, and assumpsit. Replevin is abolished. When defendant is insolvent or property will be injured or destroyed, it may be taken possession of upon proper affidavit and bond.

Administration of Estates. Executors and administrators, with the will annexed, must qualify in the court in which the will of the testator is probated. Administrators must qualify in the court in which the decedent's will would have been probated had he made a will. The assets of the decedent, after the payment of funeral expenses and the charges of administration, are applied as follows: 1. To claims of physicians not exceeding $50, for services rendered during the last illness of the decedent; and accounts of druggists not exceeding the same amount, for articles furnished during the same period. 2. To pay debts due the United States and State of Virginia. 3 To pay taxes and levies assessed upon decedent previous to death. 4. To pay debts due as personal representative, trustees for persons under disabilities, guardian or committee, where the qualification was in this State, in which debts shall be included a debt for money received by a husband acting as such fiduciary in right of his wife. 5. All other demands, ratably, except those in the next class. 6. Voluntary obligations. The order of payment applies alike to resident and non-resident creditors. The surplus, after the payment of funeral expenses, charges of administration and debts, passes, if he die intestate, to his relations. (*See Descent and Distributions.*) The payment of legacies or the distribution of the personal estate of an intestate can not be compelled until after one year from the date of the qualification of the first executor or administrator of the decedent, and only then when the legatee or distributee gives a refunding bond, with sufficient security, or when the court enters an order directing payment or distribution without refunding bonds.

Affidavits. Any oath or affidavit required by law, which is not of such a nature that it must be made in court, may be administered by or made before a justice and certified by him, unless otherwise provided; and in any case in which an oath might be administered by or an affidavit made before a justice, the same may be administered by or made before a notary, a commissioner in chancery, a commissioner appointed by the governor, or a court, or a clerk of a court. An affidavit may also be made before any officer of another State or country authorized by its laws to administer an oath, and shall be deemed duly authenticated if it be subscribed by such officer, and there be annexed to it a certificate of the clerk or other officer of a court of record of such State or country, under an official seal, verifying the genuineness of the signature of the first mentioned officer, and his authority to administer such oath. When such affidavit is made before a notary public of such other State or country the same shall be deemed and taken to be duly authenticated, if it be subscribed by such officer with his official seal attached, without being certified by any clerk or other officer of a court of record.

Aliens. Any alien not an enemy, may acquire, by purchase or descent, and hold real estate in this State, and the same shall be transmitted in the same manner as real estate held by citizens.

Appeals. From decisions in the justices' courts, appeals may be granted within ten days after rendition of judgment, if the case involves the constitutionality or validity of an ordinance or by-law of a corporation, or if the matter in controversy, exclusive of interest, is of greater amount or value than ten dollars, the appeal to be taken to the county or corporation court. From judgments of the county courts appeals are taken to the circuit court of the county within twelve months after the rendition of the judgments complained of. From judgments or decrees of the corporation courts held by the judges, and from judgments or decrees of the circuit courts, appeals are taken to the court of appeals. Time allowed for the appeal, one year from the rendition of a final judgment, decree or order, unless it be to a decree refusing a bill of review to a final decree rendered more than six months prior thereto, in which event the time allowed is six months after such refusal.

Arbitration. Persons desiring to end any controversy, whether there be a suit pending therefor or not, may submit the same to arbitration, and agree that such submission may be entered of record in any court.

Arrests. In aid of remedy in civil action arrest does not lie, but capias can be taken out against debtors about to quit the State. Before plaintiff can obtain this writ, he has to give bond with security, to pay costs and damages occasioned by arrest of the defendant.

Attachments may be upon real or personal property, and allowed as follows: 1. Against foreign corporations and non-residents having property in this State. 2. Against an absconding debtor in a suit removing, or intending to remove, his property out of the State. 3. Against a debtor who has removed, is removing, or intends to remove his property, whether the claim is due or not. 4. Against a debtor converting, about to convert, or who has converted his property, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay, or defraud creditors. 5. Has disposed of, or is about to dispose of his property, or some part thereof, with intent to hinder, delay, or defraud creditors. 6. Against a tenant removing property from leased premises before rent is due. 7. Against vessels for materials and supplies furnished or work done thereon. 8. Against crops of tenants cultivating land. 9. Against crops of persons cultivating lands for advances made upon crops. 10. Against property claimed in action of detinue, when defendant is alleged to be insolvent.

Banks. The circuit and corporation courts have power to charter any bank except a bank of circulation. The judges of these courts have the same power in the vacation of their courts. Such charters become effective only from the time they are lodged in the office of the secretary of commonwealth.

Every such bank has power to prescribe by its board of directors by-laws regulating the manner in which its stock shall be transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

The affairs of such bank shall be managed by a board of directors, consisting of not less than five persons, a majority of whom shall be citizens of the State, and each director is required to own at least $100 of the capital stock of the bank of which he is director. The board of directors shall meet at least once a month. The directors shall be elected at the annual meeting of the stockholders. Any vacancy in the board of directors shall be filled by appointment by the remaining directors, and any director so appointed shall hold his place until the next election of directors. They are to elect from their number the president. The directors are required to make once in every three months an examination of the moneys of the bank, and a settlement of the accounts of the cashier. A statement of such examination and settlement shall be recorded with the proceedings of the board.

Every such bank may purchase, hold, and convey real estate for the following purposes, and no other:

1. Such as may be necessary for its immediate accommodation in the transaction of its business.

2. Such as may be mortgaged or encumbered to secure, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or such as it may purchase at sales, under order of court, or deed of trust held by it, or to secure debts due to it; but no such property, purchased or acquired under this head, shall be held for a longer period than ten years.

No dividend higher than 6 per cent on the capital stock paid in shall be declared by any bank until the bank has a surplus of 5 per cent of its capital, nor shall any dividend be declared by which such surplus fund is reduced below the said 5 per cent.

Every such bank must make statements to the auditor of public accounts, identically as the National banks are required to make to the comptroller of the currency, and must publish such statements in a condensed form, as published by said National banks, and the auditor is required to call for such statements, whenever the comptroller of the currency calls on the National banks for such statements; and upon written application, by stockholders representing one-fifth of capital stock of the bank, the auditor may appoint some one to make a special examination in person and report the same to him. There may, at any time, be an inspection of the books and examination into the proceedings of any bank by a joint committee of the two houses of the general assembly, or a committee of each house, or one or more commissioners appointed by the general assembly or by the governor.

The legislature reserves the right to repeal, alter, or modify the charter of any bank at its pleasure.

Any banker, broker, or officer of any trust or savings institution, or of any State bank, or employee of any private banker, who shall take and receive money from a depositor with the actual knowledge that the said banker, broker, or bank, or institution is at the time insolvent, shall be guilty of embezzlement, and shall be punished by a fine double the amount so received and imprisoned from one to three years in the penitentiary.

The general assembly has provided for the organization of State banks of circulation by an act which shall be in force when the statute of the United States imposing a tax of 10 per cent on the circulation of State banks is repealed.

Such banks will be required to deposit with the State treasurer, Virginia State bonds equal to the amount of their capital stock, and will be entitled to receive from the treasurer of Virginia circulating notes equal in amount to 75 per cent of the par value of the Virginia bonds so deposited. [Acts of Assembly, 1893-4, p. 977.]

There are no laws restricting savings banks as to the class of bonds and securities in which their funds may be invested.

Chattel Mortgages and Deeds of Trusts. There may be mortgages or deeds of trusts upon personal or real property to secure the payment of money, and upon default of payment the property may be sold by the trustee without the intervention of court proceedings. The mortgage or deed of trust must be acknowledged, and must be recorded in the county or corporation wherein the property is situated.

Checks. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check. Where the holder of a check procures it to be accepted or certified, the drawer and all endorsers are discharged from liability thereon.

Conditional Sales. Every sale or contract for the sale of goods or chattels, wherein the title is reserved until the same be paid for in whole or in part, or the transfer of the title is made to depend on any condition, and possession be delivered to the vendee, is void as to creditors of and purchasers for value without notice from such vendee, unless such sale or contract be evidenced by writing executed by the vendor and vendee, in which the said reservation or condition is expressed, and until and except from the time the said writing is duly admitted to record in the county or corporation in which said goods or chattels may be. A chattel mortgage on a changing stock of merchandise is invalid. As to rolling stock, cars, etc., of railroad companies, contracts concerning them are to be recorded in the county or corporation court of the county, or corporation where the principal office of the company is located; if in Richmond city, in the Richmond chancery court, and each locomotive, car, or other piece of rolling stock is to be plainly and permanently marked with the name of the vendor on both sides thereof, followed by the word "owner."

Contracts. Every contract not in writing, made in respect to real estate or goods and chattels, in consideration of marriage, or made for the conveyance or sale of real estate, for a term therein of more than five years, shall be void, both at law and in equity, as to purchasers for valuable consideration without notice and creditors.

Conveyances are made by deed, which may be written, type-written, or printed, and must be sealed. The seal of a natural person may be a scroll, affixed by way of seal; but the seal of a corporation must be "an impression of the official seal made upon the paper alone," or "an impression made by means of a wafer, or of wax affixed thereto." The seal must be recognized as a seal on the body of the instrument, e. g.: "Witness my hand and seal." An attorney-in-fact may execute a deed, but the power of attorney must be under seal. No prescribed form is required for deed of a corporation, but it must be executed by duly authorized officers or agents. Any interest in or claim to real estate may be disposed of by deed, and any estate may be made to commence in future by deed. A deed conveying real estate, without words of limitation, passes the whole estate of the grantor, unless a contrary intention appear by the deed. A deed or will is necessary to convey an estate of inheritance or freehold for a term of more than five years, in lands; and a deed is also necessary for a voluntary partition of lands by coparceners having such an estate therein. A deed or will is also necessary to make a valid gift of goods or chattels, unless actual possession shall have come to and remained with the donee, or some person claiming under him. The deed must be acknowledged by an officer authorized to take acknowledgments. (*See Acknowledgments.*) His official character must appear in the certificate, and acknowledgment must be taken within his county or corporation. Deeds must be recorded in the clerk's office of the court of the county or corporation in which the land lies, or in which the goods or chattels may be, except in the city of Richmond, where all papers are recorded in the clerk's office of the chancery court. Neither the acknowledgment nor registry of a deed is necessary to make it valid between the parties thereto, except in case of a deed from husband and wife, which must be acknowledged and registered to convey wife's interest. But no deed can be registered unless properly acknowledged or proved by two witnesses.

Corporations. Any five or more persons may organize a corporation, which can carry on any lawful business which an individual or body politic or corporate might conduct. It may purchase, hold, and deal in real and personal property; may be trustee, mortgagor, or mortgagee, may conduct business anywhere. Minimum capital stock may be as low as $500. Upon charters granted by the Legislature two dollars per share must be paid at time of subscription, residue as required by the directors. There is no liability when stock is fully paid for, which may be in property or services. There are no constitutional provisions or limitations, and no annual tax on corporations. They are taxed only upon the property actually within the State. Where all of the officers are non-residents a resident practicing attorney at law must be appointed their attorney to receive service of process, etc.

Courts. *Their Organization and Jurisdiction:* The Supreme Court of Appeals.—This is the court of last resort in this State. Its sessions are held at three points in the State, viz.: At Richmond, Staunton, and Wytheville. It has original jurisdiction in proceedings by mandamus, prohibition, and habeas corpus. As to its appellate jurisdiction, see *Appeals*. An appeal to this court is taken by presenting to the court in session, or to some judge thereof in vacation, a petition, concisely setting forth the errors of the court below; and accompanying the petition shall be a transcript of so much of the record as will properly show wherein the said errors consist. Circuit Courts.—These courts have jurisdiction of proceedings by quo warranto, or information in the nature of quo warranto, and to issue writs of mandamus, prohibition, and certiorari to the county courts and judges thereof, and to other inferior tribunals, and to issue the writ of mandamus in all other cases in which it may be necessary to prevent a failure of justice, and in which a mandamus may issue according to the principles of the common law. They have original and general jurisdiction of all cases in chancery and civil cases at law, except cases at law to recover personal property or money not of greater value or amount than $20, exclusive of interest, and except such cases as are specially assigned to some other tribunal. They have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error, or supersedeas may, as provided by law, be taken to or allowed by the said courts, or the judges thereof, from or to the judgment or proceedings of any inferior tribunal. They have jurisdiction of all other matters, civil and criminal, made cognizable therein by law. Justice Courts have jurisdiction to extent of $100; but any action, if for over $20, may be removed to the county or corporation court, upon affidavit by defendant that he has a substantial defense, and appeals are allowed to said courts in all amounts exceeding $10, upon security being given. After judgment, if between $10 and $20, execution may be stayed forty days; if between $20 and $30, for sixty days, and if over $30 for ninety days, security in all cases being required. Corporation Courts.—A city or town containing 5,000 inhabitants is entitled to a corporation court. These courts are given jurisdiction of both law and equity matters, and civil and criminal jurisdiction. County Courts have monthly terms for the several counties. They are given original jurisdiction of criminal matters which are not tried before justices of the peace. They also have jurisdiction of various matters of police regulation. Courts of the city of Richmond.—The circuit court of the city of Richmond (four terms a year) has within the city jurisdiction of other circuit courts as above, except chancery and criminal matters. The chancery court of the city of Richmond (four terms a year) is the court of record and probate for the city, and has general jurisdiction of chancery matters. The law and equity court of Richmond (four terms a year) has concurrent jurisdiction with the circuit and chancery courts of Richmond, except as to a few matters. The Hastings courts (monthly terms) is the court of criminal jurisdiction within the city except as to small matters, which may be tried in the police court. It has also a small civil jurisdiction, and is the court of appeal for civil and criminal matters which may be appealed from the police court. The police court of the city of Richmond has jurisdiction of small civil and criminal matters, such as may be tried by a justice of the peace.

Days of Grace. Every negotiable instrument is payable at the time fixed therein without grace.

Depositions. Evidence in chancery causes is generally taken by depositions, while in common law cases it is generally oral, but depositions can be read in a common law case where the witness has died since his deposition was taken, or is out of the State, or is more than a hundred miles from the place of trial. The deposition of certain public officers, where the duties of the office prevent their attending court, may be taken and read. No permission is necessary to take a deposition, either within or without the State, except where an attesting witness to a will is unable, by reason of sickness, non-residence, etc., to give his testimony before the court in which the will is probated. Reasonable notice shall be given to the adverse party of the time and place of every deposition. In this State depositions may be taken by a justice of the peace or notary public, or a commissioner in chancery. In the United States, but without this State, before any commissioner appointed by the governor of Virginia, or any justice, notary, or other officer authorized to take depositions in the State wherein the witness may be. In a foreign country, before any person that the parties may agree upon, in writing, or before certain officers of the United States.

Descent and Distribution of Property. *Descent of Real Estate.* When any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in parcenary to such of his kindred, male and female, as are not alien enemies, in the following course: 1. To his children and their descendants. 2. If there be no child, nor the descendant of any child, then to his father. 3. If there be no father, then to his mother, brothers and sisters and their descendants. 4. If there be no mother, nor brother, nor sister, nor any descendant of either, then one moiety shall go to the paternal, the other to the maternal kindred, in the following course: 5. To the grandfather. 6. If none, then to the grandmothers, uncles, and aunts on the same side, and their descendants. 7. If none such, then to the great-grandfathers, if there be but one. 8. If none, then to the great-grandmothers, or great-grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers and their descendants. 9. And so on, in other cases, without end, passing to the nearest lineal male ancestors, and for want of them to the nearest lineal female ancestors, in the same degree, and the descendants of such male and female ancestors. 10 If there be no father, mother, brother, or sister, nor any descendant of either, nor any paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. And if there be neither paternal or maternal kindred, the whole shall go to the husband or wife of the intestate; or if the husband or wife be dead, to his or her kindred in the like course as if such husband or wife had survived the intestate and died entitled to the estate. Collaterals of the half-blood shall inherit only half so much as those of the whole blood, but if all the collaterals be of the half-blood, the ascending kindred, if any, shall have double portions. When those entitled to partition are all in the same degree of kindred to the intestate, they shall take per capita, but when those entitled to share in the estate are of different degrees of kindred, they take per stirpes.

Distribution of Personal Estate. When any person shall die intestate as to his personal estate, or any part thereof, the surplus (subject to certain exemptions), after the payment of funeral expenses, charges of administration and debts, shall pass and be distributed to and among the same persons, and in same proportions, to whom and in which real estate is directed to ascend, except as follows: 1. The personal estate of an infant shall be distributed as if he were an adult. 2. If the intestate was a married woman, her husband shall be entitled to the whole of the said surplus of the personal estate. 3. If the intestate leave a widow, and issue by her, the widow shall be entitled to a third of the said surplus. 4. If the intestate leave a widow, but no issue by her, the widow shall be entitled absolutely to such of the personal property in the said surplus as shall have been acquired by the intestate by virtue of his marriage with her prior to the 4th day of April, 1877, and remain in kind at his death; she shall also be entitled, if the intestate leave issue by a former marriage, to one-third; if no such issue, to one-half of the residue of such surplus.

Divorce. Only the causes for the several kinds of divorces can be given here. A divorce from bed and board may be decreed for. 1. Cruelty. 2. Reasonable apprehension of bodily hurt. 3. Abandonment or desertion, and if previous to the lapse of three years there be a sentence of divorce from bed and board for desertion or abandonment, after the expiration of that time it may be converted into a divorce a vinculo matrimonii. The causes of divorce a vinculo matrimonii existing at the time of the marriage are as follows: 1. Prior marriage when the consort still survives. 2. Want of age; the age of consent to marriage is fourteen in males and twelve in females. 3. Difference of race, one party being white and one negro. 4. Want of reason. 5. Natural or incurable impotency of body at the time of marriage 6. Consanguinity or affinity. 7. Conviction of either party of an infamous offense prior to the marriage, without the knowledge of the other. 8. Pregnancy of the wife at the time of the marriage without the knowledge of the husband, by some person other than he. 9. Notorious prostitution of the wife prior to the marriage, without the knowledge of the husband. 10. Fraud or force The causes or divorce a vinculo matrimonii, which supervene after marriage, are these four, namely: 1. Adultery. 2. Sentence of either party to the penitentiary. 3. Indictment of either party for felony, when such party is a fugitive from justice, and has been absent for two years. 4. Willful abandonment or desertion for three years.

Dower. A widow is endowed of one-third of all the real estate whereof her husband or any other to his use was at any time during the coverture seized of an estate of inheritance or entitled to a right of entry or action for such estate, unless her right to such dower shall be lawfully barred or relinquished. The right of dower may be relinquished by the wife uniting with her husband in conveying the real estate by deed of conveyance, etc., but no privy examination is now required. If wife, of her own free will, leave her husband and live in adultery, she shall be barred of her dower, unless he be afterward reconciled to her, and suffer her to live with him.

Executions may issue at any time within one year, and scire facias, or action to revive judgments within ten. When an execution has issued within the year, other executions may be issued, or a scire facias, or an action may be brought within ten years from the return day of an execution on which there is no return by an officer, or within twenty years from the return day of an execution on which there is such return, except that against the personal representative of a decedent it must be sued out within five years after qualification as such.

Exemptions. Bible, family pictures, and books to value of $100; pew in church, burial lot, beds and bedding for family, and also various articles of housekeeping, and sewing-machine; mechanic's tools to value of $100; seaman's or fisherman's boat to the value of $200; farmer, one yoke of oxen or pair of mules and farming utensils. A householder, the head of a family, is entitled to have, in addition, real and personal property exempt from sale under execution to the value of $2,000, excepting for a debt incurred for the purchase of such real or personal property, rent, services rendered by a laboring person or mechanic, liabilities incurred by any public officer or officer of court, or any fiduciary or attorney for money collected, and taxes, for the legal or taxable fees of any public officer or officer of a court, or for any debt or liability on contract as to which the debtor has waived his homestead exemption. And in case of householder or head of a family, all wages not exceeding $50 a month are exempt. The homestead claimed to be exempt must be described in a writing signed by the householder and duly admitted to record in the county or corporation wherein the property claimed is located.

Foreign Corporations. Foreign corporations, when they have complied with certain statutory requirements, have all the privileges and disabilities of domestic corporations. They may make contracts, sue and be sued, hold real estate necessary for the purposes for which they were incorporated, and may do all other things which a domestic corporation could lawfully do. Every foreign corporation (except an insurance company) proposing to do business in this State, shall have an office in the State, at which all claims due residents of the State against such company may be audited and paid. Such company shall also, by written power of attorney, appoint some person residing in the State its agent, on whom process can be served, which power of attorney, together with a copy of its charter, shall be recorded in the county or corporation where its chief office is located, and shall also be filed with the secretary of the commonwealth. If the company fails to comply with these requirements, any officer or agent of the company is personally liable for any claim against the company, and service of process on any employee shall be sufficient service against the company.

Fraud. Every gift, conveyance, assignment or transfer of or charge upon any estate, real or personal, every suit commenced or decree, judgment, or execution suffered or obtained, and every bond or other writing given with intent to delay, hinder, or defraud creditors, purchasers, or other persons of or from what they are or may be lawfully entitled to, shall, as to such creditors, purchasers, or other persons, their representatives or assigns, be void. This section shall not effect the title of a purchaser for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor or of the fraud, rendering void the title of such grantor. Every gift, conveyance, assignment, transfer, or charge, which is not upon consideration deemed valuable in law, or which is upon consideration of marriage, shall be void as to creditors whose debts shall have been contracted at the time it was made, but shall not on that account, merely, be void as to creditors whose debts shall have been contracted, or as to purchasers who shall have purchased after it was made; and though it be decreed to be void as to a prior creditor, because voluntary or upon consideration of marriage, it shall not, for that cause, be decreed to be void as to subsequent creditors or purchasers. A creditor, before obtaining a judgment or decree for his claim, may institute any suit which he might institute after obtaining such judgment or decree to avoid a gift, conveyance, assignment, or transfer of, or charge upon the estate of his debtor, declared void by the two preceding sections. A creditor shall have a lien upon such property from the time of filing a bill to set said instrument aside. And a petitioning creditor shall have a lien from the time of filing a lis pendens.

Garnishment. By garnishment any money due the defendant upon claim reduced to judgment, may be collected and the proceeds applied by the court to payment of judgment against the defendant.

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. All real and personal estate to which any married woman is entitled at the time of the marriage, or which she may thereafter acquire or become entitled to during coverture, shall be and continue her separate estate. Such separate estate shall not be subject to the use, control, or disposal of her husband, or to his debts or liabilities incurred before or after marriage. A married woman has power to hold, control, and dispose of such estate as if she were unmarried. A married woman may engage in trade and carry on business (but not as a partner with her husband) for her separate use and benefit. She may make contracts as if *sole* in respect to such trade, and the profits therefrom shall be her separate estate. She may sue and be sued as an unmarried woman in the conduct of such business, and any liability incurred by her as such sole trader shall not render her husband or his estate liable for such debts.

Insolvency. There is no insolvency law in this State.

Insurance Companies. Under certain statutory regulations foreign insurance companies may do business in this State. Every such insurance company shall, by written power of attorney, appoint a citizen in this State, residing in Richmond, Va., its agent, on whom may be served all lawful process against the company. The company shall, furthermore, give bond in not less than the sum of $1,000 nor more than $5,000, conditioned to make the returns and pay the taxes required by law. Such company shall deposit with the treasurer of the State, bonds of the State of Virginia, or of one of the larger cities of Virginia, to an amount equal to five per centum of the capital stock of the company, provided the cash value of the securities so deposited shall not be more than $50,000 nor less than $10,000. On exhibition of a receipt of the treasurer for said securities, and payment of the specific license tax, a license shall be issued the said company to carry on its business in this State. Although the company does not comply with these provisions, contracts of insurance made by it shall be valid, but the company will be liable for certain penalties.

Interest. Six per cent per annum; all contracts for a greater rate of interest shall be deemed to be for an illegal consideration as to the excess beyond the principal sum so loaned. If an excess beyond the lawful interest be paid in any case, the person paying the same may, in a suit brought within one year thereafter, recover it from the person with whom the contract was made; but where a bank or private individual has loaned money at a greater rate than 6 per centum and permits the maker of the note, bond, or other evidence of debt to renew the same at the rate of 6 per centum, the maker and endorsers shall be barred from the plea of usury, after twelve months from date of renewal. A bank, licensed banker or broker, or corporation authorized to make loans, may take interest at rate of one-half of 1 per cent for thirty days, and may receive such interest in advance.

Judgments are liens on real estate possessed by debtor at or after the date of judgment, or if judgment be rendered in term in a case docketed at the beginning of the term at or after the first day of the term. They are liens as against purchasers without notice, if docketed within twenty days from their date, or fifteen days before conveyance made. Where the liens of two or more judgments commence the same day the creditors share ratably.

Liens. (*See Judgments, Mechanic's Liens, and Supply Liens.*)

Limitations of Suits. Upon an indemnifying bond, or bond of executor, administrator, guardian, curator, committee, sheriff or sergeant, deputy sheriff or sergeant, clerk or deputy clerk, or any other fiduciary or public officer or contract under seal, suit must be brought within ten years; on an award or contract in writing signed by the party to be charged thereby within five years; accounts between merchant and merchant, five years; on a retail store account, within two years; on any other contract within three years. If the creditor is an infant, a married woman, or insane, the period of such limitation is additional, excepting that in all cases the action must be brought within twenty years. All real actions must be brought within fifteen years east of the Alleghany Mountains, and within ten years west of same. No new promise will take an obligation out of these periods unless in writing.

Married Women. (*See Husband and Wife.*)

Mechanic's Liens. Any person performing labor or furnishing materials for the construction, repair, or improvement of any property, building, or railroad, is entitled, under the law of Virginia, to a lien on the whole of the same, or sufficient thereof to cover the value of labor performed or materials furnished. An account showing the amount and character of the work done, or materials furnished, the prices charged therefor, the payments, if any, and the balance due, verified by affidavit, and describing the property on which the lien is claimed, is required to be recorded in county or corporation wherein the land lies, within sixty days from the the time such building, structure, or railroad is completed or the work thereon otherwise terminated, and from the time such labor is last performed or materials furnished. Liens remain in force for only six months from the time the money to be paid is due, unless suit in equity to enforce the lien is instituted within the six months. The lien also inures to the benefit of persons to whom the general contractor is indebted for labor or materials, to the amount due to the general contractor by the owner of the property at the time the latter is notified in writing of the sub-contractor's claim. Crop liens must be recorded in the office of the clerk of the county.

Mortgages. Mortgages on real estate must be recorded in office of clerk of county or corporation. Chattel mortgages can be made, but are void as to creditors and purchasers for value, without notice unless recorded.

Notes and Bills of Exchange. Virginia has enacted the Negotiable Instruments Law, prepared by the Commissioners on Uniformity of Legislation in the United States, and all former legislation in conflict with it is repealed. Where a bill of exchange drawn or indorsed within this State is protested, the party liable for the principal of such bill shall, in addition, pay damages upon the principal at the rate of 3 per cent if the bill be payable out of Virginia and within the United States, and 10 per cent if payable without the United States. Legal holidays, which are January 1st, January 19th (Lee's birthday), February 22d, July 4th, first Monday in September (Labor Day), December 25th, every Saturday from 12.00 o'clock noon until 12.00 o'clock midnight, and any day appointed by the President of the United States or governor of the State as a day of thanksgiving, fasting, and prayer, or other religious observance, shall, for all purposes as regards presenting for payment or acceptance, shall, for all purposes as regards presenting for payment or acceptance and of the protesting and giving notice of the dishonor of bills, bank checks, and promissory notes, be treated as Sunday. Whenever one of these legal holidays falls on Sunday, the Monday next succeeding shall be a legal holiday. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. When a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required, except in the case of foreign bills of exchange, and it must appear on its face to be a foreign bill to make it necessary. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. (Acts 1897-8).

Powers of Attorney should be under seal and acknowledged, and when acknowledged before a notary or other officer authorized to take acknowledgments, shall be evidence in any court in this State. A power of attorney may be admitted to record in any county or corporation. A non-resident married woman may, in conjunction with her husband, by power of attorney duly executed, acknowledged, and certified as to each of them, appoint an attorney in fact to execute any deed or other writing which she might execute and acknowledge in conjunction with her husband.

Probate. (*See Wills.*)

Protest. (*See Notes and Bills of Exchange.*)

Recordation. Contracts in writing, deeds, or mortgages conveying real estate, or goods and chattels, which are admitted to record within ten days from the day of its being acknowledged before a person authorized to certify the same for record, shall, unless it be a mortgage or deed of trust, not in consideration of marriage, be as valid as to creditors and subsequent purchasers as if such admission to record had been on the day of such acknowledgment and certificate.

Replevy. The action of replevin has been abolished. Any property levied on or seized under any attachment proceedings where the plaintiff has given bond may be retained by or returned to the person in whose possession it was, on his giving bond with condition to have the same forthcoming at such time and place as the court may require.

Suits. (*See Actions.*)

Supply Liens. All persons furnishing supplies necessary to the operation of any railway, canal, or other transportation company have a lien upon the property of such company. The lien must be filed in the clerk's office of the county or corporation court, where the chief office of the company is located, within ninety days after the last item of the bill becomes due and payable.

Taxes. Individuals and corporations are subject to the same taxation laws, but the legislature, by special enactment, may exempt a corporation from taxation. Corporations pay taxes at the same rate as is required of individuals, but the manner of assessment is not uniform. In some classes of corporations the taxes are assessed on the actual capital invested; in others, on the amount of capital stock. Most of the mercantile corporations are assessed on the capital invested. For some classes of corporations there are special provisions relating to taxes. (It is impossible to treat of this subject in a short space.)

Transfer of Corporation Stock. Shares of stock are regarded as personal property, and may be transferred on the books of the company by delivery of the certificate of stock and a power of attorney authorizing the transfer. A person in whose name shares of stock stand on the books of the company shall be deemed the owner thereof, as it regards the company.

Wills. Every person may make a will, except, 1. A person of unsound mind. 2. A person under twenty-one years of age; but a minor may, by will, dispose of personal estate if eighteen years of age. 3. A married woman; but a married woman may make a will disposing of her separate estate, or in the exercise of a power of appointment. No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such a manner as to make it manifest that the name is intended as a signature; and, moreover, unless it be wholly written by the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary. The will of a man or woman is revoked by his or her subsequent marriage, except in exercise of a power of appointment, etc. Will is also revoked by subsequent will or codicil, or by testator's canceling, destroying, etc., the same, with intent to revoke. A will is construed as if made just before testator's death, unless contrary intention appear by the will. The circuit, county, and corporation courts shall have jurisdiction as to the probate of wills (and to hear and determine suits and controversies testamentary) according to the following rules, that is to say: In the county or corporation wherein the decedent has a mansion, house, or known place of residence; if he has no such house or place of residence, then in the county or corporation wherein any real estate lies that is devised or owned by the decedent; and if there is no such real estate, then in the county or corporation wherin he dies, or a county or corporation wherein he has estate.

SYNOPSIS OF THE LAWS OF WASHINGTON

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MARK F. MENDENHALL, Attorney at Law, Spokane, Washington. (*See Card in Attorneys' List.*)

Acknowledgments. Deeds, mortgages, and other instruments in writing may be acknowledged in this State before a judge of the supreme court, or the clerk thereof, or deputy clerk, before a judge of the superior court, or the clerk thereof, or deputy clerk, before a justice of the peace, or a county auditor, or deputy auditor, or a qualified notary public. Deeds or conveyances of lands, or any interest therein, situate in this State, may be executed and acknowledged in any other State in the form prescribed therefor in this State; and before any officer authorized thereto in such State, or before any commissioner appointed by the governor of this State for such purpose; and if not acknowledged before a commissioner for this State, or a clerk of a court of record, or a notary public, or other officer having a seal, said instrument shall have attached thereto a certificate of a clerk of record, or other certifying officer, that the person whose name is subscribed to the certificate was, at the date thereof, such officer as he represents himself to be, that

he is authorized by law to take acknowledgments, and that he verily believes the signature of the person subscribed thereto to be genuine. In any foreign country acknowledgments may be taken before any minister plenipotentiary, secretary of legation, charge d' affaires, consul-general, consul, vice-consul, commercial agent of the United States, or the proper officer of any court of said country, or the mayor or chief magistrate of any city, town, or other municipal corporation therein, and shall be certified by such officer under his official seal, if any he has, which certificate shall be *prima facie* evidence of the facts therein recited. The following form of acknowledgment is used; no separate acknowledgment is necessary for the wife:

State of Washington, } ss.
County of..... }

I,.....a Notary Public in and for the State of Washington, do hereby certify, that on this.....day of....., A. D. 19...., personally appeared before me.....to me known to be the individual...described in and who executed the within instrument, and acknowledged that.....signed and sealed the same as.....free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this.....day of.....A. D. 19....

.....,
Notary Public.
Residing at....., Washington.

Actions. Every action must be prosecuted by the real party in interest; except that an administrator, executor, guardian, or trustee of an express trust, may sue without joining the person for whose benefit the action is prosecuted; and any assignee may sue and maintain an action against the obligor or debtor named in the assignment provided, that any debtor may plead in defense a counter claim or offset, if held by him against the original owner, against the debt assigned, save that no counter-claim or offset shall be pleaded against negotiable paper assigned before due, and when the holder thereof has purchased the same in good faith and for value, and is the owner of all the interest therein. Persons severally liable upon the same obligation or instrument may be included in the same action at the option of the plaintiff. No action abates by the death, marriage, or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue. Actions must be tried in the county in which the defendants, or some of them, reside at the time of the commencement of the action, subject, however, to the power of the court to change the place of trial. Actions must be commenced by service of summons upon defendants, or by filing a complaint with the county clerk as clerk of the court; provided, that service must be had personally or commenced by publication within ninety days after such filing. Summons shall direct defendants to appear and defend the action within twenty days after date of service when served personally in the State, and within sixty days after service when served personally outside the State. When defendant can not be found within the State summons may be published, after filing the complaint, once a week for six consecutive weeks, directing defendant to appear and answer complaint within sixty days after date of first publication.

Administration of Estates. Any person having the custody of any will, or named as executor in any will, shall deliver said will into court within thirty days after he shall have knowledge of the death of the testator or of his appointment as executor; wills shall be recorded within thirty days after probate and the originals carefully filed; wills probated in any other State or country shall be admitted to probate in this State on the production of a certified copy of the original record of probate thereof, and a copy of such will, authenticated by the attestation of the clerk or judge of the court in which such probation was made and by their seal of office. Letters of administration of estate of person dying intestate shall be granted in the following order: 1. To surviving husband or wife. 2. To next of kin, in the following order: child or children, father or mother, brothers or sister, grandchildren, and, 3. To one or more of the principal creditors; provided that if the persons so entitled shall neglect for more than forty days after death of the intestate to apply for letters of administration, or shall waive their right in writing to administration, then the court may appoint a suitable person to administer such estate. Executors or administrators must take oath and give bond, with two sureties approved by the court, conditioned upon their faithful performance of the duties of their trust; they must, within one month after appointment, make and return to the court a true inventory of the real and personal estate of deceased, appraised by three persons appointed by the court; they shall, immediately after appointment, publish in a newspaper printed in the county where property is situated, a notice to creditors of deceased, requiring all claims against deceased to be presented with necessary vouchers within one year after date of such notice to them, a copy of which notice shall be filed in court; all claims not presented within the year specified shall be barred; they shall indorse thereon their allowance or rejection and notify claimants forthwith of such rejection. Debts of the estate shall be paid in the following order: 1. Funeral expenses. 2. Expenses of last sickness. 3. Debts having preference by laws of the United States. 4. Taxes or any dues to the State. 5. Judgments rendered against deceased in his lifetime, and mortgages in the order of their date. 6. All other demands against the estate.

A testator may provide in his will that trustees may manage and distribute his estate according to the will without reporting to the court, further than to probate the will.

Affidavits. Affidavits may be taken before any judge of the supreme court, clerk, or deputy clerk thereof, judge of the superior court, clerk, or deputy clerk thereof, justice of the peace, notary public, county auditor, or his deputy.

Aliens. The ownership of lands by aliens other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this State, except where acquired by inheritance, under mortgage, or in good faith in the ordinary course of justice in the collection of debts; and all conveyance of lands made to any alien directly or in trust for such alien, shall be void, except that all lands, estate or interests, which were attempted to be acquired, or conveyed, prior to the adoption of the State constitution, have been confirmed to the present owners; provided, that these provisions shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire-clay, and the necessary lands for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition. Aliens may convey, mortgage, or devise such certain lands as above specified, and if they die intestate such lands will descend to their heirs.

Appeals. Any person considering himself aggrieved by any judgment or decision of a magistrate or justice of the peace may appeal therefrom to the superior court by filing notice of appeal with the said magistrate or justice and serving a copy of such notice on the adverse party or his attorney within twenty days after the rendition of the judgment or decision complained of; he must also file a bond within said time in the amount of $100 to the effect that he will pay all costs that may be awarded against him on the appeal; or if a stay of proceedings be claimed he must file a bond with sureties in double the amount of the judgment appealed from to the effect that appellant will pay such judgment and costs as may be rendered against him on the appeal. In civil actions and proceedings an appeal from any final judgment must be taken within ninety days after the date of the entry of such judgment; and an appeal from any order other than a final order, from which an appeal is allowed, must be taken within fifteen days after the entry of the order if made at the time of the hearing, and in all other cases within fifteen days after the service of a copy of such order with written notice of the entry thereof upon the party appealing or his attorney. In criminal causes an appeal must be taken within ninety days after the entry of final judgment. A party desiring to appeal to the supreme court may, in open court or before the judge, if the judgment appealed from is rendered at chambers at the time of the rendition of such judgment or within the time prescribed above, give notice that he appeals therefrom to the supreme court; the giving or service of a notice of appeal shall effect the appeal, provided, that within five days thereafter he file an appeal bond for costs and damages in a penalty of not less than $200, and in order to effect a stay of proceedings bond shall be in penalty of double the amount of damages and costs recovered in such judgment. All parties whose interests are similarly affected by any judgment or order appealed from may join in the notice of appeal.

Arbitration. No legislation on the subject.

Arrest. Defendant may be arrested upon failure to obey an order of court, as an absconding debtor if converting or concealing his property, if a non-resident and about to depart, if guilty of fraud in contracting the debt, if to prevent injury or destruction of property. The court or judge making the order of arrest shall first be satisfied by the affidavit of the party or his agent or attorney, and other proof under oath exclusive of the complaint that the case is one in which an arrest is provided for under our statutes, which proof shall be in writing and together with the order shall be filed with the clerk; before the clerk shall issue a warrant of arrest, a bond on behalf of the plaintiff shall be executed and filed in such amount as the court may have fixed in the order, conditioned to pay to the defendant all damages and expenses which he shall suffer and incur by reason of such arrest or imprisonment if the order shall be vacated or the plaintiff fail to recover in his action.

Assignments and Insolvency. No general assignment of property by an insolvent, for the benefit of creditors, shall be valid unless it be made for the benefit of all creditors in proportion to the amount of their respective claims; to such assignments the consent of creditors shall be presumed. The debtor must annex to the assignment an inventory of all his estate and a list of his creditors and the amount of their respective demands; upon application of two or more creditors by petition, within thirty days from date of recording such assignment, the judge of the superior court shall direct the clerk to order a meeting of the creditors to choose an assignee of the estate instead of the one named in the debtor's assignment; a majority in number and value attending such meeting select one or more assignees, who, after giving bonds, file an inventory of the estate, publish notice to creditors, declare dividends *pro rata* to creditors, and close up the affairs of the estate. Upon the final report of the assignee, it appearing that the assignor has been guilty of no fraud, concealment, or diversion of property in making assignment, that the estate has been made to realize the fullest amount possible, and that the expenses of the assignment have been paid, the court shall make an order discharging the assignor from any further liability on account of any debts existing prior to the making of the assignment.

Attachment. A writ of attachment shall be issued by the clerk of any court in which the action is pending, and may be had at any time after the commencement of an action before judgment; but before the writ issues, the plaintiff, or some one in his behalf, must make and file with such clerk an affidavit showing that the defendant is indebted to the plaintiff (stating the actual debt over and above all just credits and offsets), and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant, and, also, showing that defendant is a foreign corporation, or a non-resident of the State, or conceals himself or has absconded or absented himself from his usual place of abode, so that the ordinary process of law can not be served upon him; or that he has removed or is about to remove any of his property from the State, or has assigned, secreted, or disposed of, or is about to do so, any of his property with intent to delay or defraud his creditors; or is about to convert his property into money for the purpose of placing it beyond the reach of his creditors; or that he has been guilty of fraud in contracting the debt for which the action is brought, or for damages from commission of some felony or from the seduction of a female. Attachment may be had before a debt is due, when nothing but time is wanting to fix an absolute indebtedness. Before the writ shall issue, the plaintiff, or some one in his behalf, shall file a bond with two or more sureties, in a sum not less than $300 in superior court, or less than $50 in justice court, and in all cases double the amount for which judgment is sought, conditioned that plaintiff will prosecute his action without delay and pay all costs adjudged to defendant and all damages sustained by defendant by reason of the attachment, should the same be wrongfully, oppressively, or maliciously sued out.

Banks. The law in regard to banking in Washington is substantially as follows:

Capital Stock. The amount of the capital stock of any bank shall not be less than $25,000, divided into shares of $100 each, all of which shares shall be subscribed and three-fifths of which capital stock shall be paid in before commencement of business, the remainder to be subject to the call of the trustees; and it shall be the duty of the directors to file with their articles of incorporation their affidavit that three-fifths of the capital stock has been actually paid in.

Responsibility of Stockholders. Stockholders are held individually responsible, equally and ratably, for all contracts, debts, and engagements of such association accruing while they remain stockholders, to the extent of the amount of their stock at par value thereof, in addition to the amount invested in such shares.

Banking Powers. Banks shall exercise, by their board of trustees or duly authorized officers or agents, all the usual banking powers, loan money on real estate or personal security, and accept and execute trusts, fiduciary or otherwise.

Reports. Banks shall file yearly, on first Monday in June, with state auditor, a report sworn to by the president, vice-president, or cashier, of their resources and liabilities, stating the amount of deposits, the aggregate of loans, and the amount upon each class of securities; the names and residence of shareholders and number of their shares; the directors or officers for the time being; and any other matters affecting the safety of their deposits or the interests of their creditors.

Misdemeanor and Felony. It is a misdemeanor to put up or exhibit any sign or advertisement purporting thereby to be an incorporated bank, or to do business under a corporate name, when persons so engaged are not such. Any officer of a bank who shall receive or assent to the reception of deposits after he shall know that the bank is insolvent, or in failing circumstances, shall be guilty of felony.

Bills of Lading and Warehouse Receipts. A bill of lading or warehouse receipt is an instrument signed by a carrier, warehouse proprietor or his agent, describing the freight, giving name of consignor or owner

and terms of contract for carriage or storage; persons giving them must not mix goods so as to destroy identity, and must deliver goods only upon written consent of receipt-holder. Such bills and receipts are negotiable and may be transferred by indorsement of the party to whose order they are given or issued; and such indorsement shall pass all the title vested in the first holder of said instrument, when he received it, to every subsequent indorsee thereof in good faith and for value with like effect as in the case of a bill of exchange.

Chattel Mortgages and Deeds of Trust. No legislation on the subject of trust deeds. Chattel mortgages may be had upon all kinds of personal property, rolling stock of railroad company, all kinds of machinery, boats and vessels, growing crops, portable mills and such property; they shall be signed and acknowledged in the same manner as deeds; they shall be void as against creditors of the mortgagor or subsequent purchaser, unless accompanied by the affidavit of the mortgagor that it is made in good faith and without any design to hinder, delay, or defraud creditors, and placed on record in the county in which the mortgaged property is situated. If mortgaged property be removed from the county, mortgagee in order to retain his lien as against all others, must, 1, record his mortgage in the county to which property has been removed, within thirty days after such removal; or 2, take possession of said mortgaged property within thirty days after such removal; or 3, record his mortgage in the custom house. A mortgage on any vessel or boat, over twenty tons burden, shall be recorded in the office of collector of customs, where such vessel is registered, enrolled, or licensed. Chattel mortgages upon crops can not be made for more than one year in advance. The originals of all chattel mortgages may be filed in the office of the County Auditor of the county in which the property is situated within ten days from time of execution. Before the expiration of two years after the time such chattel mortgage becomes due, the mortgagee, his agent or attorney shall file an affidavit setting forth the amount due, and the effect of such affidavit shall be to preserve the lien of such mortgage for one year from date of filing; otherwise, said mortgage shall cease to be valid as against third persons. (*See Execution.*)

Community Property. Property and pecuniary rights, owned by either husband or wife before marriage, and that afterward acquired by either by gift, devise, bequest, or descent, with the rents, issues and profits thereof, shall be the separate property of said husband or wife; and said spouse may manage, convey, encumber or devise by will, all such property without the other spouse joining, as fully as though he or she were unmarried. Said property shall not be subject to the debts or contracts of the other spouse. Property not acquired or owned as aforesaid, acquired after marriage by either spouse or both, is community property; the husband shall manage and control community personal property with a like power of disposition as he has of his separate property, except he shall not devise by will more than one-half thereof; he shall also manage and control the community real property, but he shall not convey or encumber the same unless the wife joins with him in executing and acknowledging the deed or other instrument; all community real estate shall be subject to the liens of mechanics and material men for labor and materials in erecting structures and improvements thereon, and to liens of judgments recovered for community debts, and to sale on execution issued thereon.

Conditional Bills of Sale. All conditional sales of personal property or leases, containing a conditional right to purchase upon making future payments, where the property is placed in the possession of the vendee, shall be deemed absolute as to all creditors and purchasers in good faith, unless within ten days of the taking possession by the vendee, a memorandum of such sale, stating its terms and conditions and signed by the vendor and vendee, shall be filed in the auditor's office of the county wherein the vendee resides at the time of taking possession.

Contracts. In the following cases, contracts shall be void, unless made in writing and signed by the party to be charged therewith: 1, every agreement that by its terms is not to be performed in one year from the making thereof; 2, every special promise to answer for the debt, default or misdoings of another person; 3, every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry; 4, every special promise made by an executor or administrator to answer damages out of his own estate. When a contract for the personal services of a minor has been made with him alone, and those services are afterward performed, payment made therefor to such minor in accordance with the terms of the contract is a full satisfaction for those services.

Conveyances. All conveyances of real estate or of any interest therein, and all contracts creating or evidencing any encumbrance upon real estate, shall be by deed, which must be made in writing and duly acknowledged by the party making and signing it. The use of private seals to signature of grantors of deeds has been abolished; and the term "heirs" or other technical words of inheritance is not necessary to create and convey an estate in fee simple.

Corporations. Corporations may be formed under general laws, but shall not be created by special acts. No corporation, except those engaged exclusively in loaning money on real estate, shall commence business until the whole amount of its capital stock has been subscribed. Any two or more persons, desiring to form a corporation, shall make and subscribe articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take acknowledgments and file one copy of such articles in the office of the secretary of state, and another in the office of the auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the object of its formation, amount of its capital stock, time of its existence (not to exceed fifty years), number of shares of capital stock, number of trustees and names of those who shall manage affairs of the company for a time designated (not less than two or more than six months), and name of locality and county in which the principal place of business of the company shall be located. When the articles shall have been filed, the corporation shall have power 1, to sue and be sued; 2, to make and use a seal; 3, to purchase, hold, mortgage, sell and convey real and personal property; 4, to appoint officers, agents and servants, such as their business shall require, to define their powers, prescribe their duties and fix their compensation; 5, to require of them such security as may be thought proper, and to remove them at will except in the case of trustees (upon a vote of two-thirds of all the stock any trustee may be removed) to make by-laws, not inconsistent with the laws of the State and the United States; and 7, to conduct all kinds of business within the objects of the company, as expressed in the articles of incorporation. Before July 1st of each year, every corporation shall pay an annual license to the secretary of State of $10. If not then paid a fine of $2.50 attaches. If not paid by December 31st of that year, then there is a penalty of $5 per day. Corporations are forbidden to blacklist employes. Penalties, $100 to $1,000, or imprisonment from ninety days to one year, or both fine and imprisonment. Foreign corporations doing business in the State must file a certificate executed by its officers under its corporate seal, appointing a resident of the State, giving his name and address, as resident agent of the corporation upon whom service of process can be made, and a penalty of $250 is prescribed for failure to do so, said amount to be recovered in a civil action by the Attorney-General.

Courts and Jurisdiction. The supreme court is a court of record, and is vested with all power and authority to carry into complete execution all its judgments, decrees and determinations, in all matters within its jurisdiction; it shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all State officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law, for the recovery of money or personal property, when the original amount in controversy does not exceed the sum of $200, unless such action involve the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The superior courts are courts of record and are always open, except on non-judicial days; they have appellate jurisdiction in cases arising in justice and other inferior courts in their respective counties. They have original jurisdiction in all cases in equity and in all cases at law, which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine; in all other cases where the demand amounts to $100, in criminal cases amounting to felony, and of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer, to prevent or abate nuisance, proceedings in insolvency, probate, divorce, annulment of marriage, and such special proceedings as are not otherwise provided for; they shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition and habeas corpus for any person in actual custody in their respective counties; and their process shall extend to all parts of the State. Justice courts have jurisdiction in matters involving less than $100, except where the action includes the title to real property, the enforcement of a lien on real estate, false imprisonment, slander, seduction, or a suit against an executor, or administrator as such; a transcript of judgment, when filed in the office of the county clerk of the county in which the justice presides, becomes a lien upon real estate of the judgment debtor.

Days of Grace. On all bills of exchange payable at sight, or at a future day certain within this State, and on all negotiable promissory notes, orders, and drafts, payable at a future day certain within this State, in which there is not an express stipulation to the contrary, three days' grace is allowed.

Depositions. The testimony of a witness may be taken by deposition, to be read in evidence in any court in the State, when the witness resides out of the State, or more than twenty miles from the place of trial, or is about to go more than twenty miles from the place of trial and is liable to continue absent when the testimony is required, or is sick, infirm or aged, so as to make it probable he will not be able to attend at the trial. They may be taken in the State before any judge of the superior court, justice of the peace, clerk of the supreme or superior court, mayor of a city, or notary public, by serving on the adverse party or his attorney previous notice of the time and place of examination, which notice shall be served in sufficient time to allow the adverse party time by usual route of travel to attend, and three days for preparation, exclusive of the day of service; they may be taken out of the State by any person authorized by a special commission from any court of this State, which shall be issued by the clerk under the seal of the court; at the time the application for commission is presented, the court shall settle the interrogatories, which shall be attached by the clerk to the commission, or may be taken on oral questions and answers out of the State; five days' notice must be given to witness to attend and commissioner shall have power to compel attendance of witness.

Descent and Distribution of Property. Upon the death of either husband or wife, one-half of the community property shall go to, and title vest in, the survivor, without administration, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by deceased of his or her half of the community property, it shall descend equally to the legitimate issue of deceased. If there be no issue living, or none of their representatives, then said community property shall all pass to the survivor, to the exclusion of collateral heirs. Every illegitimate child is an heir to the person who shall in writing, signed by a competent witness, have acknowledged himself to be the father of such child; and such child shall in all cases be considered as heir of his mother. If any illegitimate child shall die intestate without lawful issue, his estate shall descend to his mother. The kindred of the half-blood shall inherit equally with those of the whole blood. Posthumous children are considered as living at the death of their parent. If decedent leaves no husband, wife, or kindred, the estate shall escheat to the State for the support of the common schools in the county where the decedent resided during lifetime, or where the estate is situated.

Divorce. Any person having been a resident of the State for one year may file a complaint for divorce or decree of nullity of marriage; when defendant does not answer, or admits the allegations in the complaint, the court shall require proof before granting the prayer of the complaint in granting divorce; the court shall make such disposition of the property of the parties as shall appear just and equitable, and shall make provision for custody, guardianship, support, and education of the minor children of such marriage, and shall order a complete dissolution of the marriage as to both parties, provided that neither party shall contract marriage with a third party within six months from date of decree, and in case an appeal be taken, then neither party shall intermarry with a third person until the cause has been fully determined. Divorces may be allowed on the following grounds: 1. When the consent of the party applying was obtained by force or fraud and there has been no voluntary cohabitation. 2. For adultery of either spouse, when said act is unforgiven and an action is commenced within one year after knowledge of the adultery. 3. Impotency. 4. Abandonment for one year. 5. Cruel treatment of either party, or personal indignity rendering life burdensome. 6. Habitual drunkenness of either party, or where the husband fails or neglects to make suitable provisions for his family. 7. The imprisonment of either party in the penitentiary, if the action be brought during the term of imprisonment. And the court may grant a divorce on any other cause deemed by the court sufficient, upon the application of either party, and court being satisfied that the parties can no longer live together. 8. In case of chronic mania or dementia of either party having existed for ten years, a divorce may be granted at the discretion of the court.

Dower. Statutes in regard to community property, real and personal, have taken the place of dower and tenancy by courtesy, which are abolished. (*See Community Property.*)

Execution. A writ of execution may issue any time within six years after judgment is rendered. When an execution is levied on real estate, either under decree of foreclosure or ordinary judgment, the sheriff shall forthwith proceed to sell such property, or so much as shall be necessary to satisfy judgment, interest, and costs. If the decree provides for a deficiency, the sheriff shall forthwith proceed to levy upon any other property of debtor not exempt, or the clerk of the court may issue other executions. Personal property may be sold on ten days' notice. Real property may be sold upon posting notices describing the property, in

three public places in the county, and publishing the same for four weeks prior to day of sale. All sales of real property shall be made at the Court House door on Saturday. At the time of sale the sheriff shall give purchaser a certificate of sale describing the real estate sold, the price bid for each lot or parcel, the whole price paid, and whether or not the property is subject to redemption. Real property may be redeemed any time within one year after the sale by paying the amount bid, with interest at 8 per cent, and any taxes or charges paid by the purchaser. The purchaser shall be entitled to receive the rents and profits of the property during the period of redemption, and upon redemption the amount of such rents and profits, over and above the expense of caring for, protecting, and insuring property, shall be a credit upon the redemption money to be paid, and the redemptioner shall be entitled to a sworn statement of the income and expenses of such property before redeeming it. If the property sold be farm land, the owner shall be entitled to possession of such property from the 1st of April to the 1st of December, or to be reimbursed for his work and labor in preparing such property for crops, or caring for planted crops. The sheriff shall deliver deed within one year from date of sale, provided such sale has been confirmed by the court and no redemption has been made. Stay of execution will be allowed on judgments rendered in supreme court on sums under $500, thirty days; $500 to $1,500, sixty days; over $1,500, ninety days; in superior courts, under $300, two months; $300 to $1,000, five months; over $1,000, six months, upon filing a bond with two or more sureties in double the amount of the judgment, conditioned to pay said judgment, costs, interest, and increased costs.

Exemptions. There shall be exempt from execution to every householder, being the head of a family, a homestead to the value of $2,000, if selected any time before sale, also household goods to value of $500, and other personal property to the value of $1,000 more, provisions and fuel for six months, and certain domestic animals with six months' feed for same, to value of $250; to a mechanic, tools and instruments necessary to carry on his trade for the support of his family, and material used in his trade, not to exceed $500 in value; to a farmer, teams and farming utensils, not exceeding $500 in value, 150 bushels of wheat and oats or barley, 50 bushels of potatoes, 10 bushels each of corn, peas, and onions for seed; to a physician, his library, not exceeding $500, horse, buggy, and instruments, and medicines, not exceeding $200; to attorneys, clergymen, and other professional men, their libraries, not exceeding $1,000, and office furniture, fuel, etc., not exceeding $200; to teamsters and loggers, cattle, horses, and wagons, not exceeding $300, and provisions for same for six weeks; to any person, all fire arms for family use, and boat with rigging, not exceeding $250; any pension money from the United States government, and five insurance money to the amount of exemption allowed upon property, and the proceeds of all life and accident insurance are also exempt. Any person making a general assignment for creditors shall have the right to claim and have set aside to him as exempt, all real and personal property exempt from execution; wages of $100, due to any person having a family to support, shall be exempt from garnishment. Each party has the right to select the property he may claim as exempt; but no property is exempt from an execution issued upon a judgment for the purchase price thereof, or for any tax levied thereon. No property shall be exempt from execution for clerk's or laborer's wages, nor from execution on judgment against an attorney in favor of his client, on account of any money or any property coming into said attorney's hands.

Fraud. Statutes are enacted in regard to deception, false pretenses, and fraud in the following cases: Falsely representing bank to be incorporated; receiving deposits after bank is insolvent or in failing circumstances; obtaining money under false pretenses; fraudulent representation that labor or material is paid for; using weights and measures known to be false; use of foreign ores or misrepresentation in selling mines; interference with samples of ores, or making false samples of same, or altering certificate of assayer regarding same; wearing badge or button of G. A. R. without right; misrepresentation of pedigree of breeding animals or when selling animals.

Garnishment. Writs of garnishment may be issued in the following cases: 1. When an original attachment has been issued in accordance with statutes thereupon. 2. Where the plaintiff sues for a debt, and makes affidavit that such debt is just, due, and unpaid, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee. 3. Where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have a writ of garnishment issued. In the second case above-mentioned, the plaintiff shall execute a bond payable to defendant in double the amount claimed, conditioned that he will prosecute his suit and pay all costs and damages that may be adjudged against him for wrongfully suing out such garnishment. An affidavit by plaintiff or someone in his behalf must also be filed, stating the facts authorizing the issuance of the writ, and that plaintiff has reason to believe that the garnishee is indebted to defendant, or has in his possession property and effects belonging to defendant. The writ shall be returnable within twenty days if served upon garnishee within the county where issued, or within thirty days if served in any other county in the State; should he fail to make answer within the time prescribed in the writ, the court may render judgment by default against the garnishee for the full amount claimed by plaintiff.

Holidays. The following days are legal holidays in this State, viz.: Sunday, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Fourth of July, first Monday of September, known as Labor Day; Christmas Day, any day designated by public proclamation of the chief executive of the State as a legal holiday, or as a day of thanksgiving; and the day on which a general election is held throughout the State. As to negotiable paper, the time from Saturday noon to Sunday midnight is declared to be a legal holiday.

Husband and Wife. A husband or a wife may give, grant, sell, or convey, directly, each to the other, his or her community right, title, interest, or estate in all or any portion of their community real property; and every deed so made shall operate to vest the real estate therein recited as separate property. Either may make and execute powers of attorney for the sale, conveyance, transfer, or incumbrance of his or her separate estate without the other spouse joining in the execution thereof; and either may appoint the other his or her attorney-in-fact for the purposes before stated.

Interest. The legal rate of interest is 6 per cent. Any rate not exceeding 12 per cent per annum, agreed upon in writing, is valid. All State warrants draw 5 per cent; all county, city, and school warrants draw not to exceed 8 per cent, and the public officers whose duty it is to issue warrants shall each month investigate the market value of warrants and fix the rate of interest on the same during the ensuing month.

Judgments. A judgment is a lien for the period of six years upon the realty of a judgment debtor from the date of entry in the clerk's office, and no judgment can be revived or renewed.

Liens. All vessels are liable: 1. For services rendered on board. 2. For supplies furnished. 3. For work done or materials furnished in this State for their construction, repair, or equipment. 4. For their wharfage and anchorage in this State. 5. For non-performance of any contract for transportation of persons or property between places within this State, or to or from places within this State. 6. For injuries committed both to persons and property within this State, or while transporting same to or from this State. These demands constitute liens and have priority to or from this State. These demands constitute liens and have priority in the order enumerated, have preference over all other demands and continue in force for three years from the time the cause of action accrued. Every person performing labor upon or furnishing material to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, fence, machinery, railroad, street railway, wagon road, aqueduct, or any other structure, has a lien upon the same for the labor performed or materials furnished; notice of such lien must be filed with the auditor or the county within ninety days after the completion of the building, improvement, or structure, after last work performed, or after ceasing to furnish materials; no such lien binds the property for a longer period than eight months after the claim has been filed unless an action be commenced in the proper court to enforce same within that time, and be prosecuted to judgment within two years thereafter. Every person assisting in obtaining saw logs, spars, piles, or other timber, has a lien upon the same; every person assisting in manufacturing saw logs into lumber and shingles has a lien upon the same while the same remains at the mill where manufactured, or under the control of the manufacturer; notice of claim of such lien must be filed in the office of the county auditor within thirty days from the time the lien accrued, and the action to enforce such lien must be commenced in the proper court within eight months thereafter. A claim for labor performed for any person or corporation within six months next preceding, shall be a prior lien on the franchise, earnings and real and personal property, and no mortgage, deed of trust, or conveyance, shall defeat or take precedence of said lien. Notice of lien must be filed within ninety days after ceasing work, and a copy served on said person or corporation within thirty days thereafter.

Limitations. The following limitations exist by statute in this State regarding the commencement of actions: One year—Action against sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process; against an executor or administrator for malfeasance or mismanagement of an estate, one year from discovery of same or from his final settlement. Two years—Action for libel, slander, assault and battery, false imprisonment, and for a forfeiture or penalty to the State. Three years—Contracts not in writing, open accounts, action for waste or trespass on real property, for taking or injuring personal property, for relief on ground of fraud, for seduction and breach of promise. Five years—No action for the recovery of real estate sold by an executor or administrator shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale, and no action for any estate sold by a guardian shall be maintained by the ward or by any person claiming under him, unless commenced within five years next after the termination of the guardianship, except that minors and other persons under legal disability to sue at the time when the right of action first accrued may commence action at any time within three years after the removal of the disability. Six years—Contracts in writing or liability arising out of a written agreement, or a judgment or decree of any court, or for rents, issue, use and occupation, or profits of real estate. Ten years—Recovery of real property or the possession thereof. Ten years—Suits on street grade assessments.

Married Women. Married women have the same right to acquire, hold, and dispose of property, to contract, sue, and be sued, as if unmarried; the civil disabilities of a wife are no greater than those of a husband, except that she has no right to vote or hold office other than is specially provided for by statute; they are not liable for the debts of husbands; may manage, control, devise, incumber, and convey her separate property the same as if unmarried. In the absence of misconduct, they shall be as fully entitled to the custody, control, and earnings of the children as the father. The property of wife acquired before marriage, and afterward by gift, devise, or descent, and the rents, issues, and profits thereof, are her separate property. Wife must join with the husband in the conveyance of the community real property. If husband and wife be sued together, the wife may defend for her own right; and if her husband neglect to defend, she may defend for his right also; and she may defend in all cases in which she is interested, whether she is sued with her husband or not. Expenses of the family and education of the children are chargeable on property of both husband and wife, or either of them, and they may be sued jointly or separately on such claims.

Mortgages. Mortgages are executed acknowledged, and recorded in same manner as deeds, and are generally made to secure promissory notes; they are not deemed a conveyance or transfer of title, but merely a lien for security, and the mortgagee, to gain title and possession, must proceed by foreclosure and sheriff's sale; upon default in the performance of any condition in the mortgage, the mortgagee may proceed in the superior court of the county where the land lies, to foreclose the same in a suit in equity. If the mortgage fail to provide in express terms for a deficiency judgment, none shall be granted. Any action upon the obligation secured by the mortgage without first resorting to the mortgaged property shall be deemed a waiver of the mortgage security. Sale conducted as other sales on execution. If, before the final judgment, the defendant pay into court the interest due and any installment of principal then due, together with accrued costs, further proceedings shall be stayed until a default again occurs; sale of the property shall be made in parcel, if possible, and only so much shall be sold as will be sufficient to pay the judgment, with costs.

Notes and Bills. The Negotiable Instruments act is in force. (*See Days of Grace.*)

Powers of Attorney. Powers of attorney shall be acknowledged and certified in the manner provided for the acknowledgment of deeds, and recorded as deeds.

Probate Law. The superior courts have jurisdiction of all probate matters, with power to take proof of wills, grant letters testamentary and of administration, appoint guardians, settle estates of deceased persons, and the accounts of executors, administrators, and guardians, and allow or reject claims against all said estates.

Protest. Notaries public are authorized by law to present bills of exchange and promissory notes, and protest the same, and to charge fees for noting, protesting, and mileage; upon protest for non-payment of bill of exchange drawn and endorsed within this State, if payable without the limits of the United States, damages of 10 per cent of the amount thereof shall be allowed and paid; and if such bill be payable out of this State, but within the United States, the rate of damages shall be 5 per cent thereof; such damages shall be in lieu of interest, protest fees, and other such charges; but the holder of such bill shall be entitled to demand and receive lawful interest upon the aggregate amount of the principal sum and of the damages thereon from the date of demand and protest.

Receivers. Receivers may be appointed by the court in the following cases: 1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim. 2. In an action between partners, or other persons jointly interested in any property or fund. 3. In an action where it is shown that the property,

fund, or rents and profits in controversy are in danger of being lost, removed, or materially injured. 4. In an action by a mortgagee for foreclosure of a mortgage, and the sale of mortgaged property, when it appears that such property is in danger of being lost, removed or materially injured; or when such property is insufficient to discharge the debt; to secure the application of the rents and profits accruing therefrom, before a sale can be had. 5. When a corporation has been dissolved or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights. 6. In such other cases as may be provided for by law or the discretion of the court. Before taking possession, receiver must give bond in an amount ordered by the court and to be approved by the court.

Replevy. In an action to recover possession of personal property, the plaintiff may, at time of issuing summons or before answer, claim the immediate delivery of such property; an affidavit shall be made by him, or someone in his behalf, showing—1. That he is the owner of the property described, or is lawfully entitled to the possession thereof as set out by the facts respecting such possession. 2. That the property is wrongfully detained by defendant. 3. That same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under execution or attachment, or, if so seized, that it is by law exempt from such seizure. 4. The actual value of the property claimed; he must also give bond to defendant, executed by one or more sureties approved by the sheriff, in double the value of the property, conditioned for the prosecution of the action, for the return of the property to defendant (if return thereof be adjudged) and for payment to him of such sum as may be recovered against the plaintiff. The sheriff shall then take the property into custody, and, without delay, serve upon defendant personally a copy of the affidavit and bond, or, if he can not be found, then to his agent; or, if neither can be found, then by leaving same at the usual place of abode of either, with some person of suitable age and discretion. The sheriff shall make return of his proceedings and file same, with the affidavit and bond, with the clerk of the court within twenty days after taking possession of said property.

Taxes. Taxes shall be levied by the county commissioners at their meeting in October in each year, and all taxes, whether State, county, city, or school, are collected by the county treasurer and by him distributed to the proper funds. Taxes are due on the second Monday in January, and become delinquent on May 21, from which date interest at 15 per cent per annum is charged until paid; provided that if one-half of taxes be paid on or before May 31, then the time of payment of the remainder thereof shall be extended to November 30; but if said remainder be not paid on or before November 30, then such remainder shall be delinquent and shall draw interest as above from May 31 preceding. If taxes be delinquent any person may pay same and the county treasurer shall issue a delinquency certificate, the holder of which may bring suit in three years for sale and absolute title. If the taxes due in any year be paid on or before March 15 of said year, a rebate of 3 per cent shall be allowed. All taxes which became delinquent during the year 1897, or previous years, will be cancelled by paying the original, with 6 per cent interest thereon, and all excess penalties and interest will be remitted, if paid before November 1, 1899.

Transfer of Corporation Stocks. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the corporation; but no transfer shall be valid except between the parties thereto, until the same shall have been entered upon the books of the company, showing the names of the parties by and to whom transferred, numbers and designation of the shares, and date of the transfer. Any stockholder may pledge his stock by a delivery of the certificate or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder.

Usury. If a greater rate of interest than allowed by law shall be agreed upon or received, the contract shall not be void; but in any action thereon, if the greater interest has been taken or reserved, the plaintiff shall only recover the principal less the accrued interest thereon at the rate contracted for, and the defendant shall recover costs; and if such interest shall have been paid, judgment shall be for the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest. The acts of an agent bind the principal, and where the same person acts as agent for both borrower and lender, he shall be deemed the agent of the lender.

Wills. Every male person above twenty-one years of age, and every female person above eighteen years of age, of sound mind, may by last will, devise his or her estate, real and personal. Every will shall be in writing, signed by the testator or by some other person under his direction and in his presence, and shall be attested by two or more competent witnesses subscribing their names thereto in presence of the testator. No nuncupative will shall be good where the estate exceeds the value of two hundred dollars, unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator at the time of pronouncing the same did bid some person present to bear witness that such was his will, and that such nuncupative will was made at the time of the last sickness and at the dwelling-house of the deceased, or where he had been residing for ten days or more, except where such person was taken sick from home and died before his return; but mariners at sea and soldiers in the military service may dispose of their wages or personal property by nuncupative will; nuncupative wills must be offered for proof within six months after the speaking of the testamentary words.

SYNOPSIS OF THE LAWS OF WEST VIRGINIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. Brown, Jackson & Knight, Attorneys at Law, Charleston. (*See Card in Attorneys' List.*)

Accounts should be verified by the affidavit of the plaintiff or some one for him, stating that there is, as affiant verily believes, due and unpaid from the defendant to him upon the demand or demands stated in the declaration, including principal and interest after deducting all payments, credits, and sets off made by the defendant, and to which he is entitled, a sum certain to be named in the affidavit; if such affidavit has been filed with the declaration by the plaintiff in any action for the recovery of money arising out of contracts out of the Circuit Court, no plea can be filed by the defendant unless accompanied by his affidavit that there is *not*, as he verily believes, any sum due from him to the plaintiff upon the demand or demands stated in plaintiff's declaration, or that there is a less sum due him on the said demand or demands. If the defendant fails to file such affidavit judgment shall be given by the Court for the plaintiff for the sum stated in his affidavit, with interest thereon, from the date of the affidavit until paid, unless there be an order for inquiry of damages, in which case such order shall be executed in court, and the affidavit above mentioned shall be legal evidence on said inquiry. If such affidavit be not filed judgment will not be entered by the court unless the plaintiff files such affidavit or proves his case in open court.

Acknowledgments. The clerk of the county court of any county in which any deed, contract, power of attorney, or other writing is to be, or may be recorded, shall admit the same to record in his office as to any person whose name is signed thereto, when it shall have been acknowledged by him or proved by two witnesses as to him, before such clerk of the county court. A clerk of the county court shall also admit any writing to record as to any person whose name is signed thereto upon the request of any person interested therein, upon a certificate of his acknowledgment before a justice, notary public, recorder, prothonotary or clerk of any court within the United States, or a commissioner appointed within the same by the governor of this State, written or annexed to the same, to the following effect, to-wit:

"State (territory or district of) ....., county of ....., to-wit: I, ..., a commissioner appointed by the governor of the State of West Virginia for the said State (or territory or district) of..... (or I, ..., justice of the county aforesaid, or I, ..., recorder of said county, or I, ..., a notary of said county, or I, ..., a prothonotary or clerk of the ..... court of said county) do certify that ....., whose name (or names) is (or are) signed to the writing above (or hereto annexed) bearing date on the ..... day of ....., ... has (or have) this day acknowledged the same before me in my said ..... Given under my hand this ..... day of....." Or upon a certificate so written or annexed under the official seal of any minister plenipotentiary, *charge d'affaires*, consul-general, consul, deputy-consul, vice-consul, consular agent, vice consular agent, commercial agent or vice commercial agent, appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town or corporation therein that the said writing was acknowledged by such person, or proved as to him by two witnesses before any person having such appointment, or before such court, mayor or chief magistrate. If the acknowledgment be before a notary without the State he shall certify the same under his official seal. As to a married woman.—When a husband and wife have signed a writing purporting to convey real estate, the wife may acknowledge the same together with or separately from her husband. If both acknowledge said writing at the same time the certificate of such acknowledgment shall be in form or effect as follows:

State (territory or district) of ....., county of ....., to wit: I, ..., a commissioner appointed by the Governor of West Virginia, for the said State of ....., (territory or district of .....) or I, ..., a justice of the peace of said county of ....., or I, ..., a notary of the said county of ....., or I, ... a prothonotary (or clerk) of the ..... court of county of ..... (or other officer or person authorized to take acknowledgments by section three of this chapter, as the case may be)* do certify that ..... and ....., his wife, whose names are signed to the writing above (or hereto annexed) bearing date the ..... day of ....., 19....., have this day acknowledged the same before me in my said ....." "Given under my hand this ..... day of ....., 19....." If the wife acknowledges a deed or other writing separately from her husband the certificate of her acknowledgment after the star (*) in the foregoing form shall be in form and effect as follows: "Do certify that ....., the wife of ....., whose names are signed to the writing above (or hereto annexed), bearing date the ..... day of ....., 19....., has this day acknowledged the same before me in my said ....." "Given under my hand this ..... day of ....., 19 ..." If the acknowledgment be before a notary without this State he shall certify the same under his official seal. The certificate of acknowledgment of a corporation or joint stock association may be in form or effect as prescribed in the next preceding section down to the star (*) and then as follows: "Do certify that ..... personally appeared before me in my said ....., and being by me duly sworn (or affirmed) did depose and say that he is the president (or other officer or agent of the corporation or association) described in the writing above (or hereto annexed), bearing date the ..... day of ....., authorized by said corporation (or association) to execute and acknowledge deeds and other writings of said corporation (or association), and that the seal affixed to said writing is the corporate seal of said corporation (or the seal of the said association, as the case may be), and that the said writing was signed and sealed by him in behalf of said corporation (or association) by its authority duly given. And the said ..... acknowledged the said writing to be the act and deed of said corporation (or association)." Or if the corporation has no seal, or the association has no seal, omit the words, "seal affixed to said writing is the corporate seal of said corporation (or association, as the case may be), and say, "said corporation (or association) has no seal." And in such case omit the word "sealed" after the words "signed and" and insert in lieu the word "executed."

Actions. The common law forms are retained, modified by statute in some respects. Actions at law and suits in chancery are commenced by the issue of a summons to the defendant returnable within ninety days after its date to the court on the first day of the term, or in the clerk's office at rules. Rules are held by the clerk in his office on the first Monday and following Tuesday and Wednesday in each month at which the parties file their pleadings at law and in equity, take orders of publication, appointment of guardians ad litem and rules upon the opposite party to plead, etc.

Administration of Estates. Non-residents may qualify as personal representatives of decedents in this State. Administrators may be appointed by the county court which has general charge of all probate matters. The executors must qualify as such by giving bond before the county court in which the will of the testator or a properly authenticated copy thereof is admitted to record, or before a clerk thereof in vacation. Administration is granted to the distributees who apply therefor, preferring first the husband or wife and then such of the others entitled to distribution as the court shall see fit. If any distributee fail to apply for administration for a period of thirty days after the death of the decedent the court may grant administration to one or more of his creditors or to any other person. An executor or administrator must give bond in the penalty equal at least to the full value of the personal estate to be administered, and if there is a will which authorizes the executor to sell the property or receive the rents and profits thereof, the bond must be for a penalty equal to the full value of the personal estate and of such real estate. No married woman can be a personal representative and the marriage of a *femme sole* who has been such, terminates her authority. If three months elapse without a personal representative of any decedent being appointed or qualified, the county court on the motion of any person may cast the administration upon the sheriff or any other county officer who acts as the administrator henceforward without giving any bond as

such, his bond as such officer being liable. Where the assets of a decedent in the hands of his personal representative, after the payment of funeral expenses and charges of administration, are not sufficient for the satisfaction of all demands against him, shall be applied: 1. To debts due the United States. 2. Taxes and levies assessed upon the decedent previous to his death. 3. Debts due as personal representative guardian or committee, where the qualification was in this state, in which debts shall be included a debt for money received by a husband acting as such fiduciary in right of his wife. 4. All other demands ratably except those in the next class. 5. Voluntary obligation.

The real estate of a decedent is made assets and may be subjected to the payment of his debts by suit in equity, if the personal estate be insufficient, and if the executor or administrator does not bring such suit within six months from the time of his qualification any creditor may bring the same on behalf of himself and other creditors whether he has obtained a judgment at law for his claim or not.

Affidavits may be made before any officer of another state or country authorized by its laws to administer an oath, and shall be deemed duly authenticated if it be subscribed by such officer, and there be annexed to it a certificate of the clerk or other officer of a court of record of such state or country, under an official seal, verifying the genuineness of the signature of the first mentioned officer and his authority to administer an oath, and they may also be made before a commissioner appointed by the governor of this State.

Aliens. No disabilities attached to aliens, not enemies, in reference to purchase, enjoyment, conveyance, devise, or descent of property.

Appeals. An appeal from the judgment of a justice lies to the circuit court of the county when the amount in controversy in the trial before the justice exceeds fifteen dollars, exclusive of interest and costs, or the case involves the freedom of a person, the validity of a law, or an ordinance of any corporation, or the right of a corporation to levy tolls or taxes, except when such judgment is rendered on the verdict of a jury, in which case the proceedings before the justice may be reviewed in the circuit court by writ of certiorari. An appeal from, or writ of error, or supersedeas to a judgment, decree, or order of the circuit court lies to the supreme court of appeals in the following cases: 1. In civil cases, where the matter in controversy exclusive of costs is of greater value or amount than $100, wherein there is a final judgment, or decree, or order. 2. In controversies concerning the titles or boundaries of land, the probate of a will, or the appointment of a personal representative, guardian, committee, or curator. 3. Concerning a mill, road, way, ferry, or landing. 4 Concerning the right of a corporation, county, or district to levy tolls or taxes. 5. In any case of quo warranto, habeas corpus, mandamus, or prohibition. 6. In any case involving freedom or the constitutionality of a law. 7. In any case in chancery wherein there is a decree or order dissolving or refusing to dissolve an injunction, or requiring money to be paid, or real estate to be sold, or the possession or title of the property to be changed, or adjudicating the principles of the cause 8. In any case where there is a judgment or order quashing, or abating, or refusing to quash or abate an attachment. 9. In any civil case where there is an order granting a new trial or re-hearing, and in such cases an appeal may be taken from the order without waiting for the new trial or re-hearing to be had. 10. In any criminal case where there has been a conviction in a circuit court, or there has been a conviction in an inferior court, which has been affirmed in a circuit court.

Arbitration. Parties to any controversy, whether there be a suit pending therefor or not, may submit the same to arbitration and agree that said submission may be entered of record in any court. An award so made shall not be set aside except for errors apparent on its face, unless it appears to have been procured by corruption or other undue means, or by mistake, or that there was partiality or misbehavior in the arbitrators or any of them, but the power of a court of equity over an award is not taken away.

Arrests. An order for the arrest of a defendant in an action or suit may be made by the court in which the action is pending, or by the judge or clerk thereof in vacation, upon the affidavit of the plaintiff or any credible person showing to the satisfaction of the court or judge, or clerk thereof in vacation, the nature and justice of the plaintiff's claim, the amount which the affiant believes the plaintiff is entitled to recover in the action and the existence of some one or more of the following grounds for the arrest of the defendant: 1. That the defendant has removed or is about to remove any of his property out of the State with the intent to defraud his creditors; or 2. that he has converted or is about to convert his property or any part thereof into money or securities with like intent; or 3. that he has assigned, disposed of or removed his property or any part thereof, or is is about to do so with like intent; or 4, that he has property or rights in action which he fraudulently conceals; or 5, that he fraudulently contracted the debts or incurred the liability for which the action or suit is brought; or 6, that he is about leave the State and reside permanently in another State or country, without paying the debt or liability for which the action or suit is brought. When sufficient cause shall be shown for the arrest of defendant as aforesaid, such court, judge or clerk shall make an order directing the defendant to be arrested and held to bail for such sum as the said court, judge or clerk shall think fit, and the plaintiff shall thereupon deliver to the clerk of the court in which the action is pending a bond in a penalty double the amount sworn to, executed by himself or some other person for him, with one or more sufficient securities, to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of said arrest should it thereafter appear that the order was wrongfully obtained. Defendant may be discharged upon giving bond conditioned that he will be in the county and answer such interrogatories as may be filed, within four months after judgment, decree or order, and make the required conveyance or delivery, or perform or satisfy such judgment, decree or order. In a civil action before a justice an arrest can be made upon practically the same affidavit as above mentioned, the plaintiff giving bond satisfactory to the justice in the penalty of not less than $100.

Assignments and Insolvency. There are no insolvent laws in this state. Assignments are made by a deed of trust acknowledged as other deeds and recorded in the office of the county clerk of the county wherein the property assigned or any part thereof is situate, conveying the property to a trustee to realize on the same and distribute it among the creditors. The deed ordinarily states the amount of the commissions of the trustee, which are usually 5 per cent, but if not so stated are 5 per cent on first $300 and 2 per cent on the balance. The assignee is not required to give bond unless some one of his cestuique trusts demands it, in which case he must give bond before the clerk of the county court in a penalty equal to the full value of the property before sale is made. If the trustee fail to give such bond for twenty days after notice given, his powers cease and another may be appointed. Every transfer or change ("transfer" including every gift, sale, conveyance and assignment, and "charge" including every conferred judgment, deed of trust, mortgage, lien and incumbrance) which is not upon consideration deemed valuable in law, shall be void as to creditors whose debts shall have been contracted at the time it was made; but shall not upon that account merely be void as to creditors whose debts shall have been contracted, or as to purchasers who shall have purchased after it was made; and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be decreed to be void as to subsequent creditors or purchasers. Every transfer, or charge, made by an insolvent debtor attempting to prefer any creditor of such insolvent debtor, or to secure such a creditor, or any surety, or indorser for a debt, to the exclusion or prejudice of any other creditor shall be void as to such preference or security, but shall be taken to be for the benefit of all creditors of such debtor, and all the property so attempted to be transferred or charged shall be applied and paid *pro rata* upon all the debts owed by such debtor at the time such transfer or charge is made; provided, that any such transfer or charge by an insolvent debtor shall be valid as to such preference or priority, unless a creditor of such insolvent debtor shall institute a suit in chancery within one year after such transfer, or charge, is made to set aside and avoid the same, and cause the property so transferred, or charged, to be applied toward the payment *pro rata* of all the debts of such insolvent debtor existing at the time such transfer, or charge, is made, subject, however, to the provision hereinafter contained with reference to creditors uniting in such suit and contributing to the expenses thereof. But if such transfer, or charge, be admitted to record within eight months after it is made, then such suit to be availing must be brought within four months after such transfer, or charge, was admitted to record. Every such suit shall be deemed to be brought in behalf of the plaintiff and all other creditors of such insolvent debtor, but the creditor instituting such suit, or proceeding, together with all creditors of such insolvent debtor who shall come into the suit and unite with the plaintiff before final decree and agree to contribute to the costs and expenses of said suit, shall be entitled to have their claims first paid in full *pro rata* out of the property so transferred, or charged, in preference to any creditor of such debtor who shall before final decree decline or fail to so unite and agree to contribute to the costs and expenses of said suit, but not in preference to such creditor as may attempt to sustain the preference given him by such transfer or charge; provided, further, that nothing in this section shall be taken to prevent the making of a preference as security for the payment of purchase money or a *bona fide* loan of money or other *bona fide* debt contracted at the time such transfer, or charge, was made or as security for one who at the time of such transfer, or charge, becomes an indorser or security for the payment of money then borrowed; provided, further that nothing in this section contained shall be taken to affect any transfer of bonds, notes, stocks, securities or other evidences of debt in payment of, or as collateral security for the payment of a *bona fide* debt or to secure any endorser, or surety, whether said transfer is made at the time said debt is contracted, or endorsement made, or for the payment or security of a pre-existing debt. It is customary to file a sworn statement of the claim with the assignee to prove the claim; no notice is required; if he rejects it, a suit in chancery is the proper remedy; he has a reasonable time to accept his trust and close up the estate. An assignment does not give a debtor full discharge unless so agreed by his creditors.

Attachments. When any action at law or a suit in equity is about to be or is instituted for the recovery of any claim or debt arising out of contract, or to recover damages for any wrong, the plaintiff at the commencement of the action or suit, or at any time thereafter and before judgment, may have an order of attachment against the property of the defendant, on filing with the clerk of the court in which said action or suit is about to be or is brought, his own affidavit or that of some credible person, stating the nature of the plaintiff's claim and the amount, at the least, which the affiant believes the plaintiff is entitled justly to recover in the action or suit, and also that the affiant believes that some one or more of the following grounds exist for an attachment: 1. That the defendant or one of the defendants is a foreign corporation, or is a non-resident of this State; or 2, has left or is about to leave this State with intent to defraud his creditors; or 3, so conceals himself that a summons can not be served upon him; or 4, is removing or about to remove his property (or the proceeds of the sale of his property, or a material part of such property or proceeds) out of this State, so that process of execution on a judgment or decree in such action or suit when it is obtained will be unavailing; or 5, is converting or about to convert his property, or a material part thereof, into money or securities, with intent to defraud his creditors; or 6, has assigned or disposed of his property or a material part thereof, or is about to do so, with intent to defraud his creditors; or 7, has property or rights in action, which he conceals; or 8, fraudulently contracted the debt or incurred the liability for which the action or suit is about to be or is brought. And unless the attachment is sued out upon the first of such grounds, the affiant shall also state in his affidavit the material facts relied upon by him to show the existence for the grounds upon which his application for the attachment is based. But upon objection to the sufficiency of such facts the affiant shall have the right, within such time, not exceeding ten days, as may be prescribed by the court, in which the action or suit is pending, to file a supplemental affidavit, stating any other facts which may have come to his knowledge since the filing of the original affidavit, and which are relied upon to show the existence of such grounds; and when filed, such supplemental affidavit shall be taken as a portion of the original. And such attachment may be sued out in a court of equity for a debt or claim, legal or equitable, whether the same be due or not, upon any of the grounds aforesaid, but the affidavit, in case the claim or debt be not due, must show when it will become due. Provided, that an attachment shall not be sued out against a foreign corporation for debt not due, upon the ground alone that it is a foreign corporation, nor against a non-resident defendant for a debt not due, unless the affiant shows by his affidavit that such defendant was a resident of this State when the debt was contracted, and that the plaintiff believed he would remain a resident of this State at the time he gave defendant credit. Attachments are issued in justice's court on plaintiff giving bond in double the amount of the claim and filing an affidavit showing the nature of the claim, that it is just, the amount thereof as near as may be, and that the defendant is a non-resident of the State or a foreign corporation, or has absconded, left his residence, or concealed himself with intent to hinder or defraud any creditor or avoid service of process, or that he being a resident of the State is about to depart therefrom and reside out of the State without having paid plaintiff's demand, or that he has committed fraud in any of the particulars mentioned in the 4th, 5th, 6th, 7th, and 8th particulars in an attachment in the circuit court above mentioned.

Banks. The capital stock of a banking company shall not be less than $25,000, nor more than $500,000. The stockholders are personally liable to the creditors, over and above the amount of stock held by them, respectively, to an amount equal to their respective shares so held, for all liabilities accruing while they are such stockholders. The State bank examiner is required, between April and November, to examine the condition of each bank and publish a statement in the county where the bank is located.

Not less than thirteen persons, citizens of this State, whose fitness for the proposed trust shall be certified by the judge or judges of the circuit court of the county wherein the proposed bank is to be located, may organize a savings bank without being a joint stock company. The business shall be managed and directed by a board of trustees, whose responsibility and fitness shall be certified by the judge of the circuit court of the county in which the bank is located. The deposits shall be invested by the trustees in first mortgages or

deeds of trust on real estate, bonds or securities of the United States, or of any State, county, district, city, or town, or loaned on personal security. An available fund, not exceeding 10 per cent of the deposits, shall be kept to meet current expenses and payments in excess of receipts. The circuit court of the county, on application of five depositors, may appoint two or more persons to examine into the investments and its business generally. Title and trust companies are authorized to do a general banking business, provided a resolution to that effect be adopted by the vote of two-thirds of the capital stock of such company, and a certified copy of such resolution filed with the secretary of State, who shall thereupon issue a certificate declaring such company to be a banking institution, when it will become subject to the provisions of law regulating banks of issue and circulation, discount and deposit.

Chattel Mortgages and Deeds of Trust. The mortgage is practically unused in this State, the deed of trust having taken its place. Liens are taken upon chattels by a deed of trust acknowledged and recorded as other deeds of trust.

Conveyances. Deeds in West Virginia must be under seal, for which a scroll is sufficient in the case of a private person, and must be acknowledged or proven before two witnesses; when acknowledged witnesses are unnecessary. Any deed is void as to creditors and subsequent purchasers for a valuable consideration until and except from the time it is duly admitted to record in the county wherein the property conveyed is situated.

Corporations may be formed under general laws, but can not be created by special acts. They may be incorporated for the following purposes: 1. For manufacturing, mining or insuring. 2. For constructing and maintaining lines of magnetic telegraph, telephones, lines of piping or tubing for the transportation of oils or other fluids, and carrying on the business properly pertaining to such works and improvements. 3. For establishing hotels and springs companies gas works, water works, cemeteries, or building and loan associations, and transacting the business properly pertaining thereto. 4. For universities, colleges, academies, seminaries, schools, or institutes, for the purpose of teaching any branch or branches of useful information or learning, or promoting religion, morality, military science or discipline; or the diffusion of knowledge, including library companies and literary and scientific associations. 5. For agricultural and industrial societies. 6. For benevolent associations, societies and orders, including orphan, blind and lunatic asylums and hospitals, lodges of free and accepted masons, independent order of odd fellows, improved order of red men, sons of temperance, good templars and knights of pythias, and all other associations, societies and orders of like character. 7. For gymnastic purposes. 8 For railroads and other works of internal improvement. 9. For banks of issue and circulation, and of discount and deposit, and for s vings institutions 10. And for any other purpose or business useful to the public for which a firm or copartnership may be lawfully formed in this State. There must be at least five incorporators, who must pay in at least 10 per cent of the capital stock subscribed, and sign and acknowledge an agreement in form prescribed by the statute, which agreement must be accompanied by the affidavit of two of the incorporators that the said 10 per cent has been actually and in good faith paid in, and must be filed with the secretary of State, who thereupon issues the certificate of incorporation. No corporation, except for railroad or canal purposes, incorporated by this State shall have a larger capital than $5,000,000. Corporations of other States are permitted to do business in this State by complying with certain regulations.

Courts, Terms and Jurisdictions. The jurisdiction of the circuit court is from $50 up; the circuit court sits in each county regularly three times a year. The jurisdiction of justices extends to all civil actions, provided the amount of money or damages, or the value of property claimed does not exceed $300, exclusive of interest and costs, excepting actions for false imprisonment, malicious prosecution, slander, breach of marriage promises, or seduction. Only five days is required to elapse between the service of the summons and the return day thereof, but the defendant upon making oath that he has a just defense to the action may have as a matter of right a continuance for one week.

Days of Grace. (*See Notes and Bills of Exchange.*)

Depositions. In any pending case the deposition of a witness, whether a party to the suit or not, may, without any commission, be taken in or out of this State by a justice or notary public, or by a commissioner in chancery, or before any officer authorized to take depositions in the county or State where they may be taken, and if certified under his hand may be received without proof of the signature of such certificate. On affidavit that a witness resides out of this State or is out of it in the service thereof, or of the United States, his deposition may be taken before any commissioner appointed by the governor of this State, or any justice, notary public, or other officer authorized to take depositions in the State wherein the witness may be; or if the deposition is to be taken in a foreign country, by or before such commissioner or commissioners as may be agreed upon by the parties or appointed by the court, or if there be none such by or before any American minister, plenipotentiary, charge d'affaires, consul-general, consul, vice-consul, consular agent, vice-deputy consular agent, commercial agent, or vice commercial agent, appointed by the government of the United States, or by or before the mayor or other chief magistrate of any city, town, or corporation in such country, or any notary public therein. Any person or persons taking such depositions may administer an oath to the witness and take and certify the depositions with his official seal annexed, and if he have none, the genuineness of his signature shall be authenticated by some officer of the same State or country under his official seal. Seasonable notice shall be given to the adverse party of the time and place of taking every deposition; and in a suit in equity the deposition may be read if returned before the hearing of the cause, although after an interlocutory decree, if it be as to a matter not thereby adjudged and be returned before a final decree. A deposition in a case at law taken on such notice under the three preceding sections may be read in such case, if when it is offered the witness be dead or out of this State, or one of its judges, or in any public office or service the duties of which prevent his attending the court, or be unable to attend it from sickness or other infirmity, or be out of the country in which the case is pending. But when the only ground of reading a deposition is that the witness is out of the county, on motion to the court before the commencement of the trial, it may, for good cause shown, require such witness to attend in person.

Descents and Distributions. *Course of Descents.* When any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in parcenary to his kindred, male and female, in the following course: 1. To his children and their descendants. 2. If there be no child, nor the descendants of any child, then to his father. 3. If there be no father, then to his mother, brothers and sisters and their descendants. 4. If there be no mother, nor brother, nor sister, nor any descendant of either, then one moiety shall go to the paternal, the other to the maternal kindred, in the following course: 5. To the grandfather. 6. If none, then to the grandmother, uncles and aunts on the same side and their descendants. 7. If none such, then to the great-grandfathers or great-grandfather, if there be but one. 8. If none, then to the great-grandmothers or great-grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants. 9. And so on in other cases without end, passing to the nearest lineal male ancestors, and for want of them to the nearest lineal female ancestors in the same degree, and the descendants of such male and female ancestors. 10. If there be no father, mother, brother or sister, nor any descendant of either, nor any paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the husband or wife of the intestate; or if the husband or wife be dead, to his or her kindred in the like course as if such husband or wife had survived the intestate and died entitled to the estate. 2. Collaterals of the half-blood shall inherit only half so much as those of the whole blood. But if all the collaterals be of the half-blood the ascending kindred, if any, shall have double portions. 3. When the children of the intestate, or his mother, brothers and sisters, or his grandmother, uncles and aunts, or any of his female lineal ancestors, living with the children of his deceased lineal ancestors, male and female, in the same degree, come into the partition, they shall take per capita or by person; and where a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take per stirpes, or by stocks, that is to say, the shares of their deceased parents; but whenever those entitled to partition are all in the same degree of kindred to the intestate, they shall take per capita or by persons. 4. Bastards shall be capable of inheriting and transmitting inheritance on the part of their mother as if lawfully begotten. 5. If a man having had a child or children by a woman shall afterwards intermarry with her, such child or children, or their descendants, if recognized by him before or after the marriage, shall be deemed legitimate. 6. The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate. 7. Any person in *ventre sa mere* who may be born in ten months after the death of the intestate shall be capable of taking by inheritance in the same manner as if he were in being at the time of such death.

Distribution of Personal Estate. After payment of debts, etc., personal estate is distributed in the same manner as realty, with the following exceptions: 1. If the intestate was a married woman, and leave children surviving, her husband shall be entitled to one-third of the said surplus, and if she leave no children he shall be entitled to the whole thereof. 2. If the intestate leave a widow or children by the same or a former marriage, the widow shall be entitled to one-third of the said surplus, and if he leaves no children she shall be entitled to the whole thereof. To the State shall accrue all the personal estate of every decedent of which there may be no other distributee.

Divorce. The circuit court on its chancery side has jurisdiction for annulling or confirming marriages or granting divorces, when the parties or one of them shall have resided in the State one year next preceding the time of bringing suit. Suit shall be brought in the county in which the parties last cohabited, or at the option of the plaintiff, in the county in which the defendant resides or in the county in which the plaintiff resides. The wife may prosecute such suit in her own name and a decree may be had upon an order of publication. The bill in such suit can not be taken for confessed, but its allegations must be proven. A divorce from the bond of matrimony may be decreed for adultery, impotence existing at the time of entering into the marriage contract, where either of the parties is sentenced to confinement in the penitentiary, where prior to the marriage either party, without the knowledge of the other, had been convicted of an infamous offense, where either party willfully abandons or deserts the other for three years, where at the time of the marriage the wife, without the knowledge of the husband, was *enciente* by some person other than the husband, or prior to such marriage had been, without the knowledge of the husband, notoriously a prostitute, or where prior to the marriage the husband without the knowledge of the wife had been notoriously a licentious person. A divorce from bed and board may be decreed for cruel or inhuman treatment, reasonable apprehension of bodily hurt, abandonment, desertion, or where either party after marriage becomes a habitual drunkard. A charge of prostitution falsely made by a husband to his wife is deemed cruel treatment within the meaning of the statute.

Dower. The widow is endowed of one-third of all the real estate whereof her husband or any other to his use was at any time during the coverture seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished.

Executions. In the circuit court can be issued after the close of the term, or the court, after the fifteenth day of the term, may make a general order allowing executions to issue after ten days from the date of the judgment or decree, although the term be not ended. For special cause an execution may issue at any time. In a justice court executions may be issued immediately after judgment is rendered. An execution is a lien on the personal property of the debtor from the time it is delivered to the officer. In a justice court a stay bond may be given by the defendant, which will stay execution for a length of time dependent upon the amount of the judgment, viz.: Not over $50, two months; $50 to $100, four months; over $100, six months. The debtor may release property upon which an execution from the circuit court has been levied by giving a forthcoming bond, upon the forfeiture of which judgment may be obtained upon motion after ten days' notice, and an execution then issued, upon which no forthcoming bond is allowed to be given.

Exemptions. Any husband or parent residing in this State, or the widow, or the infant children of deceased parents, may set apart and hold personal property to the value of not exceeding $200, to be exempt from execution or other process, except as hereinafter provided. And any mechanic, artisan, or laborer residing in this State, whether he be a husband or parent, or not, may hold the working tools of his trade or occupation to the value of $50 exempt from forced sale or execution. Provided, that in no case shall the exemption allowed any one person exceed $200. This exemption shall not apply to any claim for the purchase money of the personal estate in respect to which such exemption is claimed or to any proceeding for the collection of taxes or county or district levies. Such husband, parent, or infant children of deceased or insane parents may set apart a homestead of the value of $1,000, under certain regulations.

Garnishment. The plaintiff in an attachment, or a judgment creditor may, by an indorsement on the attachment order or by suing out a suggestion on his execution, as the case may be, designate any person as being indebted to or having in his possession the effects of the defendant or one of the defendants; and such person, upon service of the order and indorsement or suggestion upon him, is required to appear at the next term of the court, or if the action be before a justice upon the day ordered by the justice, and disclose under oath in what sum he is indebted to the defendant or judgment debtor, or what effects of the defendant or judgment debtor he has in his hands. The plaintiff or judgment creditor has a lien upon such indebtedness or property from the time of the service upon the garnishee.

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. (*See Married Women.*)

Interest. Legal rate is 6 per cent. Corporations may make special contract for a greater rate. Excess of interest above 6 per cent, if usury is splead, except in the case of corporations, can not be recovered.

Judgments. All judgments for money are liens upon the real estate of the debtor at, and after, their date, or if rendered by the circuit court, from the first day of the term at which rendered. To preserve the lien as against a purchaser, for value, without notice, an abstract of the judgment must be docketed in the office of the county clerk within sixty days after its date, or before a deed to such purchaser is recorded. A judgment of a justice, as against such purchaser, is a lien only when docketed. Judgment liens are enforced in chancery after two years from the date of the judgment, or after the return of an execution, "No property found."

Limitations. Saving certain exceptions in favor of persons under disability no person shall make an entry on or bring an action to recover any land, but within ten years next after the time at which the right to make such entry or to bring such action shall have first accrued to himself, or to some person through whom he claims. Personal actions for the recovery of money founded upon an award, or any contract other than a judgment or recognizance, shall be brought within ten years after the right to bring the same shall have first accrued if upon a bond or other contract in writing; if upon any other contract, within five years, unless it be an action for a settlement between partner and partner, or upon accounts between merchant and merchant, in which case it must be brought within five years from the cessation of dealing. Suits upon a recognizance, not a recognizance of bail, or upon a judgment shall be brought within ten years after the right to bring the same shall have first accrued; and upon a recognizance of bail, within three years. Every action upon a judgment rendered in another State or country shall be barred, if by the laws of such other State or country such action or suit would be there barred, and no such action shall be brought against any person who has resided in this State more than ten years upon a judgment or decree rendered more than ten years before the commencement of such action. A claim may be removed from the operation of the statute by a promise in writing to pay the same.

Married Women. A married woman may take by inheritance, grant, gift, bequest, or devise, and hold as her sole and separate property, free from the control and disposal of her husband and from liability for his debts, real and personal property as if a *femme sole*, and may convey and devise the same, but unless living separated and apart from her husband or he be non compos mentis, can sell and convey real estate, only when her husband consents thereto by joining in the deed or other writing. And a married woman may by power of attorney duly executed, her husband joining therein, acknowledged and certified as she is required to acknowledge and certify deeds, appoint an attorney in fact for her, and in her name, to execute and acknowledge for record any deed or other writing which she might acknowledge in person, and any deed, or other writing, so executed and acknowledged by such attorney in fact in pursuance of said power of attorney and while the same remains in force shall be as valid and effectual in all respects to convey the title and interest of such married woman in the real estate thereby conveyed, and to bear her right of dower therein as if she had in person and in the manner required by statute executed and acknowledged the same. She may carry on business in her own name, and a judgment at law may now be had against her; and such judgment is a lien upon the *corpus* of the real estate, and an execution thereon may be levied upon her separate personal property as though she were a *femme sole*.

Mortgages and Deeds of Trust. Mortgages are but little used in this State. Are executed and acknowledged in the same manner as deeds. A decree of a court of chancery is required to enforce them; hence, deeds of trust, under which the trustee sells the property when required by the cestui que trust, after default in payment have taken their place. Sale is made at public auction upon four weeks' notice by advertisement, and by posting a notice at the front door of the court house of the county in which the property is, if the property be over $300 in value, in the opinion of the trustee, and if it be in his opinion less than $300 in value, by posting such notice thirty days prior to sale at front door of court house and in three other public places in the county (one of which, in the case of real estate, shall be as near the premises to be sold as practicable). In all cases notice must be served on the grantor in the deed, his agent or personal representative, if in such county, at least twenty days prior to sale.

Notes and Bills of Exchange. Every promissory note, or check for money, payable in this State at a particular bank, or at a particular office thereof for discount or deposit, or at the place of business of a savings institution, or savings bank, and every inland bill of exchange payable in this State, shall be deemed negotiable, and may, upon being dishonored for non-acceptance or non-payment, be protested, and the protest be in such case evidence of dishonor in like manner as in the case of a foreign bill of exchange; and every instrument which is made payable at a day subsequent to its date, and is otherwise in the form of a check, shall be deemed a bill of exchange. A bill or note which becomes due on a Sunday shall be payable, and may be protested, on the succeeding day; or, if that be Christmas day, or the first day of January, or the twenty-second day of February, or the thirtieth day of May, or the fourth day of July, or on Labor day, then on the succeeding Tuesday; and a bill or note which becomes due on a day after a Sunday which falls on either of the said named dates, or on a Sunday bearing either of said dates, shall be payable, and may be protested, on the succeeding Tuesday; and a bill or note which becomes due on a Christmas day, or the first day of January, or the twenty-second day of February, or the thirtieth day of May, or the fourth day of July, or on Labor day, or any national or State election day, or a day appointed or recommended by the Governor of this State, or the President of the United States, as a day of thanksgiving, or for the general cessation of business, shall be payable, and may be protested, on the succeeding day; and if such succeeding day be Sunday, then on the succeeding Monday; and a bill or note which becomes due on a Saturday shall be payable before 12 o'clock, noon, of that day, and if not then paid, shall be payable, and may be protested, on the following Monday; or if that be a day after a Sunday which falls on a date hereinbefore named, then on the next day. And no days of grace shall be allowed or counted on any negotiable instrument made after this act takes effect, except where it is otherwise provided in such instrument. The sending of notice of protest or dishonor of any bill, note or other negotiable instrument, by mail properly addressed to the last known post office of any party, shall be deemed equivalent to personal service of such notice upon him. Upon a duly protested negotiable note or bill of exchange, whether payable in or out of the State, an action of debt or assumpsit may be maintained and judgment given against all liable thereon, or against any one, or any intermediate number of them.

Power of Attorney should be acknowledged or proven in the same manner as deeds.

Probate Law. The county court, composed of three county commissioners, is the probate court, with jurisdiction for hearing proof and admitting wills to probate, appointing personal representatives and guardians, etc.

Protest. (*See Notes and Bills of Exchange.*)

Replevin. The action of replevin is abolished. The plaintiff, in an action of detinue, can have immediate possession of the property in controversy upon proper affidavit being filed and giving bond. The defendant can reclaim property so taken by plaintiff, pending the termination of the suit, by giving counterbond.

Taxes are assessed as of the first day of April in each year, and are liens on the real estate on which they are assessed from such time. In every odd year (1893-95, etc.) sales are held by the sheriff of each county of the lands delinquent for taxes of the two preceding years. One year after sale is allowed for redemption. All lands, upon which no individual will bid the amount of the taxes, etc., charged thereon at such sale, are knocked off to the State, and, after the time for redemption has expired, are sold in proceedings by the school commissioner of each county, and the proceeds pass to the free school fund of the State. There is a tax of 2½ per cent on collateral inheritances of $1,000 and over in value.

Transfer of Corporation Stocks. Such stocks are transferable on the books of the company under such regulations as the by-laws prescribe. Can not be transferred without consent of the board of directors, unless fully paid up, or satisfactory security given for payment of the residue.

Wills. To be valid, a will must be in writing, and unless wholly written by the testator must be signed or acknowledged by him in the presence of two competent witnesses present at the same time, who in the presence of the testator and of each other shall subscribe the same. If a will be attested by a person to whom, or to whose wife or husband, any beneficial interest in any estate is thereby devised or bequeathed, if the will may not be otherwise proved, such person shall be deemed a competent witness; but such devise or bequest shall be void, except, that if such witness would be entitled to any share of the estate of the testator, in case the will were not established, so much of his share shall be saved to him as shall not exceed the value of what is so devised or bequeathed. If a will charging any estate with debts, be attested by a creditor, or the wife or husband of a creditor, whose debt is so charged, such creditor shall, notwithstanding, be admitted a witness for or against the will. No person shall, on account of his being executor of a will, be incompetent as a witness for or against the will. Where a will relative to estate within this State has been proved without the same, an authenticated copy and the certificate of probate thereof may be offered for probate in this State. When such copy is so offered, the court to which, or the clerk to whom, it is offered, shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personality in the State or country of the testator's domicil, and shall admit such copy to probate as a will of personality in this State; and if it appear from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of land in this State by the law thereof, such copy may be admitted to probate as a will of real estate.

SYNOPSIS OF THE LAWS OF WISCONSIN

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by HARING & FROST, Attorneys at Law, Milwaukee. (*See Card in Attorneys' List.*)

(References are to sections of Sanborn & Berryman's Annotated Statutes of Wisconsin, 1898.)

Accounts. When accounts are sent for collection or suit, full names of claimants should be given, also dates and items, and whether due or not. When accounts are to be filed with proof of debt in probate or assignment proceedings same must be verified under seal of notary.

Acknowledgments. A certificate of acknowledgment is sufficient under the Wisconsin laws if made substantially in the following form:

State of Wisconsin, } ss.
.....County. }

Personally came before me this.....day of....., 19...., the above (or within) named A. B. and C. B., his wife, (or if an officer adding the name of his office), to me known to be the person who executed the foregoing (or within) instrument, and acknowledged the same.

....
....
.... (Insert designation of officer.)

If such conveyance shall be executed in any other State, Territory, or district of the United States, it may be executed in the manner and acknowledged in the form prescribed in the preceding paragraph, or according to the laws of such State, Territory, or district; and the execution thereof may be acknowledged before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such State, Territory, or district to take acknowledgments of deeds therein, or before any commissioner appointed by the governor of this State for such purpose; and if executed within the jurisdiction of any military post of the United States not within this State, it may be acknowledged before the commanding officer thereof. In the cases provided for in the preceding paragraph unless the acknowledgment be taken before a commissioner appointed by the governor of this State for that purpose, a clerk of a court of record, with its seal attached, a notary public with his seal attached, or the commanding officer of a military post, such conveyance shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and if such deed be executed and acknowledged according to the laws of such State, Territory, or district, such certificate shall state that fact. If any such deed, the acknowledgment of which shall be taken by any such commissioner, clerk of a court of record, notary public or commanding officer of a military post, shall be executed and acknowledged according to the laws of such State, Territory, or district, the certificate of acknowledgment shall certify that fact. If any such conveyance be executed in a foreign country, it may be executed in the manner and acknowledged in the form prescribed in sections 2216 and 2217, or according to the laws of such country, and the execution thereof may be acknowledged before any notary public, or other officer authorized by the laws of such country to take the acknowledgment of deeds thereon, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner or consul of the United States, appointed to reside therein; such acknowledgment shall be certified by the officer taking the same under his hand, and if taken before a notary public, his seal of office shall be affixed thereto; and if such conveyance be executed and acknowledged according to the laws of such country, the certificate of acknowledgment shall certify that fact. All deeds and other written instruments heretofore executed and proved and acknowledged in accordance with the provisions of said sections 2217, 2218, 2219, and 2220, as amended by said subdivision 16, chapter 194, laws of Wisconsin, 1879, shall be entitled to be read in evidence and to be recorded, and all records of such deeds or other written instruments shall have the same force and effect as though they had been executed and properly acknowledged within this State,

Actions. (*See Attachment.*) The circuit and a few county courts have general civil jurisdiction; justices of the peace, of actions (except for some torts and about land titles) up to $200. In Milwaukee county there are two superior courts of practically concurrent jurisdiction with the two circuit courts. The practice is under a code. Distinctions between actions at law and suits in equity have been abolished as to form. Actions affecting real property must be commenced in the county where the land lies; non-residents must give security for costs on commencing actions, if security is demanded. In courts of record such security to the amount of $250 is almost always required, generally in the form of an undertaking signed by a resident of the county, who justifies in twice the amount of the undertaking. Process to begin action in all courts is by summons. In courts of record defendants must answer in twenty days. Arrest is allowed in certain cases. (*See Arrests.*)

Administration. All probate jurisdiction is vested in the county court of the county of decedent's domicile, or of his property *situs*, if a non-resident. Administrators, executors, and guardians are appointed on petition and notice, the widow and heirs being preferred over creditors, unless the former decline or fail to apply for thirty days. Security usually for twice the amount of personal property is required. Foreign administrators and executors can act here upon filing copies of their letters, without ancillary administration. Possession and income of all realty (except homestead, *q. v.*), as well as personalty, pertains by statute to the administrator, etc., pending disposition of the estate, but not unless debts to be paid and not sufficient personalty to pay them. All non-exempt property is applicable to debts. Debts must be proved by affidavit filed in county court, within a time prescribed by notice given upon issue of letters (not less than six months nor more than one year), unless time extended by court; else they are barred. This limitation does not bar contingent liabilities not fixed before said time expires if contingent claim is duly filed. The federal courts ignore this limitation and entertain actions against the administrator, etc., on such debts within six years if assets are still in hand. Any other creditor or the administrator, etc., may contest claims. In insolvent estates, all other debts prorate after full payment of administrative, funeral, and last sickness expenses, and debts preferred by United States laws. In solvent estates the same order obtains. Allowance to widow and minor heirs is made irrespective of solvency of estate. The residue (except homestead, *q. v.*) is distributed under the will or the law of descent. (*See Descent.*)

Affidavits (*see Acknowledgments*) may be taken before any judge or clerk of a court of record, commissioner, county clerk, notary public, justice of the peace, United States court commissioner, or register of deeds. They may be taken in any other State or territory, before any judge, court commissioner, master in chancery, notary public, justice of the peace, or other officer authorized to administer oaths; but must have attached a certificate of the clerk or other proper certifying officer of a court of record of the county or district in which it was taken, under the seal of his office, that the person whose name was subscribed to the jurat was, at the date thereof, such officer as he is therein represented to be, and that he believes the signature of such officer to be genuine. When taken before a notary public with an impression of his official seal affixed, no further attestation shall be necessary.

Aliens may acquire, transfer, and inherit property like citizens, except that non-resident aliens can not acquire more than 320 acres of land by purchase. Alien women are not barred of dower. (*See Descent.*)

Appeals. Appeals may be taken to supreme court direct from circuit and county courts having civil jurisdiction and from superior courts of Milwaukee county within two years from entry of judgment. Bills of exceptions must be served within sixty days after written notice of entry of judgment. The appellant must give security for costs of appeal. Additional undertaking is necessary to stay execution. Appeals from justice courts to circuit court and county courts with civil jurisdiction are permitted within twenty days after entry of judgment, and security may be required. The case is tried de novo in the appellate court if amount in controversy exceeds $15. Appeals as to wills and other matters of probate jurisdiction lie from county to circuit court, and thence to supreme court.

Arbitration. All persons, except those under disability, may, by agreement in writing, with two witnesses, submit any controversy except claims to real estate, to one or more arbitrators, and, if stipulated, judgment may be entered on the award.

Arrests are permitted in certain actions based on tort or fraud and in actions for fine or penalty, and for recovery of personal property unjustly detained or concealed: undertaking must be given for costs and damages from arrests. No female can be arrested on any action except for willful injury to person, character or property. When an order of arrest is granted, bail, in a sum stated, to appear in court or respond to the judgment may be given. The person so arrested may, upon application to court, have bail reduced or order of arrest vacated, if bail excessive or order unlawfully made.

Assignments for Benefit of Creditors (no form of voluntary assignment is prescribed by law) may be made by an insolvent debtor to such person, being a resident of this State, as he elects, who must give bond in a sum not less than the present value of the assets. The assignee must file list of creditors and inventory within twenty days, and notify creditors who may prove their claims by affidavit filed with assignee or with clerk of circuit court of county where debtor lives. Proof of claim must be so filed within ninety days after assignee gives notice, or creditor is barred from dividend ordered and paid before claim filed. That court has a general supervision of all proceedings and settles final accounts. The assignee or any creditor can contest any claim filed. Debts to employes for wages, etc., earned within three months are preferred by law, and the same for six months *may* be preferred by the assignment. All others must prorate, and other preferences avoid assignment. Exemptions are allowed to assignor (*see Exemptions*), except to partnerships and corporations, but individual partners are entitled to exemptions. Insolvent debtors, after properly noticed hearing, may be discharged from all liabilities. A debtor who has made a voluntary assignment, by filing, within one year thereafter, his application for discharge in the circuit court, where such assignment is filed, may be discharged from all debts of claimants who have participated therein, after notice and hearing. Upon payment of final dividend, judgment satisfying the balance due on all claims filed under the assignment is entered in favor of assignor. Such application shall have annexed thereto a sworn statement that he has not disposed of any property for his future benefit, or in any way fraudulently compounded with any of his creditors; opposing creditors may file written objections specifying grounds, and may then have a jury trial on hearing of application for discharge, and have the right to appeal. Foreign assignments are treated according to the rules of comity. A majority of creditors in number and amount of claims may procure removal of assignee, and appointment of a new one, and the circuit judge may, upon notice and after hearing, remove assignee for cause. The assignee must file verified itemized statement annually during continuance of trust; assignor and assignee may be fully examined as to all matters relating to state of business immediately before and after assignment. By chapter 334, laws of 1897, a radical change is made in the Wisconsin laws regulating assignments for benefit of creditors. After providing that an assignment with unlawful preferences shall be invalid as to them, but valid for all other purposes, and that such void preferences shall also be invalid as to creditors proving under the assignment, and that a judgment obtained, an attachment levied, or a garnishment made in collusion with a debtor shall be deemed a security given by him within the meaning of the law as to preferences the act of 1897 further provides that no assignment shall be void because of any defect, informality, or mistake in it, or in the bond, or in the list of creditors, and that no creditor shall, where a debtor has attempted to make an assignment, obtain any priority over other creditors by attachment, garnishment, or otherwise, in consequence of the assignment or any proceedings thereunder being declared void, but that all creditors shall prorate in the proceeds of the property thus attempted to be assigned, which shall be administered under the direction of the court by an assignee or a receiver. The law of 1897 then provides as follows: When the property of an insolvent debtor is attached, levied on, or garnisheed in favor of a creditor, the debtor may within ten days thereafter make an assignment of his property, and all such attachments, levies, garnishments, or other proceedings made or suffered within ten days before the assignment shall be dissolved, and the property attached or levied upon shall be turned over to the assignee or the receiver. When any insolvent debtor shall confess judgment, or do any act, or make any conveyance, or otherwise cause any of his creditors to obtain preference over the others, or if he shall not within ten days after levy of attachment, execution, or garnishment make an assignment of all his property for his creditors, or within such time institute *bona fide* proceedings to vacate the attachments or levies, then, or within thirty days thereafter, any two or more of his creditors whose claims, whether due or to become due, aggregate not less than $200, may make a petition to the circuit court in the county or circuit where the debtor resides, and at a hearing upon notice to the debtor and the creditor sought to be preferred, or their attorney of record, the court shall proceed summarily upon such petition to hear the parties and receive evidence, and if it shall appear to the court that the debtor is insolvent, and has been giving or is about to give a preference to any of his creditors, or has refused or neglected to make an assignment of his property, the court shall appoint a receiver who shall take possession of his property, including that attached or levied upon, and of all property conveyed in violation of this act, and shall have charge and control of the same and convert it into money, and distribute it *pro rata* among the creditors proving valid claims due or to become due, and the court shall order the debtor to file a correct inventory of his assets and a list of his creditors. Such receiver shall be subject to the general receivership laws of the State, and the court may order the debtor to do or to refrain from doing whatever is necessary to carry this act into effect. The provisions of the act do not apply to any payment or satisfaction, in whole or in part, of a past due debt made in the usual course of business without any intent on the part of the creditor to evade the provisions of this act. An insolvent person, within the meaning of the act, is defined to be one whose non-exempt property is insufficient in amount at a fair valuation to pay his debts, and the condition of the debtor at the time of making or attempting to make an assignment, or giving or attempting preferences shall determine his insolvency. This law has been construed by the Wisconsin supreme court not to affect a judgment note given before April 24, 1897, the time when the law was adopted.

Attachment (*see Garnishment*) may be had, on contracts, when indebtedness exceeds $50, for absconding from State or concealment in it, to avoid process; for fraudulent disposition or removal, actual or intended, of property; for fraudulent contraction of liability; for official defaults; or against a non-resident, or a foreign corporation. On torts, it may be had in the two latter cases. It may be had in justice court, when indebtedness exceeds $5, on the same grounds and also for residence of defendant over 100 miles away and in another county of this State. The writ issues only upon affidavit of the ground for it and of the debt or tort, and (except in justice court) a bond for $250 must go with it. The defendant may traverse or deny the ground for the writ, and if he succeeds on trial the writ is dismissed, but judgment (on proof of debt) given for plaintiff, less costs of attachment. Attachment may be had on a debt not due, if bond is given for thrice the debt; but on failure to sustain the writ, the action too fails. In case of traverse, allegations of affidavit must be strictly proved as questions of fact. The affidavit and the traverse of its allegations form an issue. Amendments of affidavits permitted. Attaching creditors do not prorate. (*See Assignments for Benefit of Creditors.*)

Banks. Banking laws and amendments are submitted to popular vote under a constitutional provision. Private banks may be organized under Sections 2,023d to 2,023g. State banks may be incorporated under the general banking laws of the State, collected and revised to 1898 as Section 2,024 of the Revised Statutes. Any persons, association, or corporation using the words "bank," "banking," or "banking house," are considered a private bank within the meaning of the laws of the State, and must make report under penalty to the State treasurer at the same time and in the same manner as required of State banks (2,023d). A statement of financial condition of banks must be published by the State treasurer in a newspaper published where the bank is located (2,023g). State banks may be formed by any number of persons who associate to establish offices of discount, deposits, and circulation under the State banking act; the aggregate capital stock shall not be less than $25,000 nor more than $500,000, and the bank must be located in a township containing not less than 200 voters, and is not allowed to use circulating notes exceeding in amount the amount of capital stock (Section 2,024, subd. 18). From banks of circulation, adequate security by deposit of bonds and public stock with the State treasurer is required before the issue of their bills; but federal legislation renders the careful provisions of the law in this respect practically a dead-letter. By recent acts the office of bank examiner has been created. A careful scrutiny of State banking is now provided for, the duties of the State bank examiner being in general analogous to those of the federal examiners of national banks. The State bank examiner must visit, without any previous notice, every bank in the State once each year, and at any other time he deems it necessary, and shall have free access to all records, books, securities, and papers, and may examine on oath any officer or employe as to the business of the bank. At least three times in the year every bank shall report to the examiner, upon a prescribed form, showing fully the condition of business, and the report shall be published in a newspaper in the county. No security but the individual liability of each stockholder to the amount of his stock is required from banks of deposit and discount only, but this liability remains for six months after disposal of stock, and by written declaration each stockholder may become individually liable for all the debts of the bank. The capital stock of a State bank in Wisconsin is not taxed, but the stockholders are assessed and taxed on the value of their shares of stock at the place where the bank is located and not elsewhere, and this provision applies to the stock of any national bank in Wisconsin. Shares of stock are deemed personal property and are transferable. The

usual rules of interest and discount apply to State banks; 10 per cent is the highest contract rate, and 6 per cent the legal rate of interest.

Any State bank may change into a national banking association under the general banking laws of the United States on the written assent of stockholders, owning two-thirds of the capital stock, being filed in such bank. The organization may then be perfected by the directors under the laws of the United States, and thereafter all the property shall vest in the new association.

Savings banks may be organized by any number of persons not less than twenty to receive deposits and to loan for the benefit of depositors. They must file a certificate in writing stating the name of the association, of the corporators, and of the city, village, town, and county in which the savings bank is to be conducted. Not more than one-half of the deposits may be employed in loans on personal security and in purchase of the public stock or bonds of the United States, or of Ohio, Indiana, Michigan, Illinois, Iowa, Wisconsin, and Minnesota, or of the authorized bonds of any incorporated city, village, town, or county in those States. All other loans must be secured by mortgage of unincumbered real estate lying in those States. No savings bank can invest any part of its deposits in the stock of any railroad company. Deposit in one year by any one person is limited to $1,000. No circulating notes or bills may be issued. Only the treasurer may receive salary, except when the deposits exceed $500,000 the president may receive a salary not exceeding $500. Any income must be divided semi-annually among the depositors to an amount not to exceed 6 per cent a year on their deposits. Surplus earnings above such amount must be divided once in three years.

It is made a misdemeanor by statute to issue a check with intent to defraud, when the maker has no funds on deposit.

Bills of Lading. Bills of lading, warehouse receipts, and vouchers are transferable by delivery, without indorsement or assignment, and any person to whom the same is so transferred shall be deemed and taken to be the owner of the property therein specified, so far as to give validity to any pledge, lien or transfer made or created by such person, unless such receipt, bill of lading, voucher or other document shall have the words "non-negotiable" plainly written or stamped on the face thereof. Fraudulently issuing duplicate receipts or bills is made punishable by imprisonment.

Bills of Sale. (*See Sales.*)

Chattel Mortgages must be filed in town or city clerk's office, or actual possession must be taken and kept by mortgagee, to make them good against third parties; and, when filed, they must be renewed by filing affidavit of amount unpaid within thirty days before the expiration of every two years from date. If on household furniture or exempt chattels (*see Exemptions*), they are invalid without the wife's signature before two witnesses. If on stocks of merchandise, the mortgagor every sixty days must file a verified statement of amount sold, payments made, and new stock added; if this statement is not so filed, the mortgage becomes due between the parties and invalid as to third parties fifteen days afterward. Foreclosure sales can not be had without mortgagor's consent, and the goods can not be removed from the county within five days after seizure. On satisfaction of mortgage, certificate of mortgagee may be filed and original mortgage removed from files. Interest is limited to 10 per cent per annum; and all fees for renewals, etc., limited to 14 per cent per annum. (Chap. 327, Laws 1895.)

Collaterals and Pledges. When goods and chattels shall be pledged or mortgaged for the payment of money, or the performance of any contract or agreement, the right and interest in such goods of the person making such pledge or mortgage may be sold on execution against him, and the purchaser shall acquire all his right and interest, and shall be entitled to the possession of such goods and chattels on complying with the terms and conditions of the pledge or mortgage, but the officer shall not take such property out of the possession of the pledgee or mortgagee when the judgment debtor is not entitled to the possession thereof, unless the judgment creditor or purchaser shall have first complied with the terms and conditions of such pledge or mortgage.

Commercial Travelers do not have to pay State or local licenses if selling only from sample in usual way to dealers; but all persons traveling about selling at retail to consumers (excepting manufacturers and mechanics selling their own production) shall pay license fees of thirty dollars and upwards.

Corporations, Associations, and Partnerships. Under the revision of 1898 it is provided that no corporation, joint stock company, express company, or common law partnership, incorporated or organized otherwise than under the laws of this State, except corporations or associations created solely for religious or charitable purposes, insurance companies, and fraternal or beneficiary corporations, societies, orders, and associations furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, shall transact business, or acquire, hold, or dispose of property in this State until such association, company, partnership, or corporations shall have caused to be filed in the office of the Secretary of State a duly authenticated copy of its charter, articles of association or incorporation, or of co-partnership, and all amendments thereto which may be made while it shall continue to do business therein. Organizations complying with this rule shall be deemed to have appointed the Secretary of State their attorney, upon whom all process may be made arising out of business transactions in this State, and the Secretary of State shall mail a copy thereof addressed to such organization. Violation of this rule subjects the organization to a penalty of $5 00 for the first offense, and $1,000 for every subsequent violation, and invalidates all contracts made by any such organization or partnership failing to comply with this rule, but such contracts may be enforcible against it or them. Corporations organized in Wisconsin must file list of officers with register of deeds of county where corporation is located, and list of changes in officers as made. If not so filed process may be served on corporation by service on Register of Deeds.

Days of Grace are abolished by statute.

Deeds. (*See Acknowledgments.*) Deeds and mortgages must be sealed (with scroll or "L. S.") and have two witnesses and be duly acknowledged. An unrecorded deed or mortgage is void as against a bona fide purchaser without notice, but good as against a subsequent judgment or attachment. Deeds and like instruments for record must be acknowledged within the State before any judge, or clerk of court of record, court commissioner, county clerk, register of deeds, notary public or justice of the peace; without the State, according to either the local law or the Wisconsin law, before a notary with seal or other officer of such State, Territory or District duly authorized by the laws thereof to take such proof; clerk's certificate should be attached. (*See Married Women.*)

Depositions. The deponent shall be sworn to testify the truth, the whole truth, and nothing but the truth, relating to the action, proceeding, or matter for which his testimony is taken, and his evidence shall be taken in writing. The officer taking the same must insert therein every answer or declaration of the witness which either party requires to be inserted; in depositions taken by oral interrogatories, every interrogatory shall be reduced to writing. When completed, the deposition shall be carefully read to witness and he shall subscribe the same. The depositions shall in all cases be delivered or transmitted to the clerk of the court, the magistrate, or other person before whom the action, proceeding, or matter is pending, securely sealed. Objections which go to the form or order of a question should be noted in the deposition before it is answered. The party producing the deponent shall, in all cases, be allowed first to examine him, either upon verbal or written interrogatories, on all points which he shall deem material; and then the adverse party may examine the deponent in like manner; after which either party may propose such further interrogatories as the case may require. The deposition shall be written out by the justice or other officer by whom the same is taken, or by the deponent, or by some disinterested person in the presence and under the direction of the justice or officer. When a regular commission issues from a court of record, and interrogatories are filed, the following statutory rules prevail: Sec. 4115, R. S., 1878—The commissioner named in the direct interrogatories shall fix the time and place for executing the commission, and give the other commissioner, if any, one day's notice thereof, when he resides in the same place and when not, one day's notice in addition for every thirty miles of distance between the place of his residence and the place fixed for executing the commission. If the notice be by mail double time shall be allowed; but notice may be waived in writing or by appearance at the execution of the commission. If there be two commissioners, the place for executing the commission shall be fixed in the county where they reside, unless they agree upon another. The commissioner named in the direct interrogatories shall have charge of and return the depositions. RULE XVIII, Sec. 4—On the receipt of the commission by the commissioner named in the direct interrogatories, he shall fix a time and place for executing it, and notify the other commissioner, if any there be, under the provisions of Section 4115 of the Revised Statutes, unless such notice be waived in writing or by his appearance at the execution of the commission. At the time and place so fixed the commissioner or commissioners shall proceed to execute such commission in accordance with said section 4115, and sections 4, 5, and 6 of this rule, copies whereof shall be transmitted with the commission for their instruction. If either of the commissioners shall not attend at the time and place so fixed, the other may proceed to execute the same with like effect as if both were present; but he must certify in his return that the commissioner so absent had due notice of the time and place of executing the same, and that he failed to attend pursuant thereto. Sec. 5. The commissioner or commissioners shall proceed to execute same as follows: The commissioners, or one of them, shall publicly administer an oath to each witness named in the commission, that the answers which he shall make to each of the interrogatories propounded to him shall be the truth, the whole truth, and nothing but the truth. Each interrogatory, direct and cross, shall be propounded to him, and his answer thereto be correctly reduced to writing, and, with any exhibit thereto, be annexed to and returned with the commission. Each witness shall subscribe his name at the end of his answers to the interrogatories, and the commissioner or commissioners shall subscribe his or their names at the foot of each page of the testimony. If any exhibit is produced and proved, or referred to in the answer of any witness, it shall be marked as an exhibit by some convenient designation, either by letter or number, by the commissioners, or one of them, and be referred to in the testimony of the witness, and shall be annexed to and returned with the depositions. If the paper be a record or other document not in the control of the party or the commissioner, it shall be sufficient to annex a copy, stated by the witness in his answer to be a true copy thereof. The commissioner or commissioners shall certify in their return that each witness was duly sworn or affirmed before giving his evidence, and shall also state the time when the testimony was taken. The return of the commissioner or commissioners shall be indorsed on the commission. Sec. 6. When the answers to all the interrogatories and exhibits thereto, if any, shall have been so signed and annexed to the commission upon which the return shall be indorsed, the proper commissioner shall inclose the same in a suitable envelope, which shall be properly sealed, and direct the same to the clerk of the court from which the commission issued, at his place of office, with the title of the action indorsed thereon, and the package shall be immediately transmitted to him by mail or express.

Descent and Distribution. Realty (except homestead, *q. v.*), undevised, descends to: 1. Children and their issue, if all are in the same degree; else by right of representation. 2. Widow or husband surviving. 3. Parents, or survivor of them. 4. Brothers and sisters, or if deceased, their issue by right of representation. 5. Other next of kin in equal degree. All realty owned in husband's life is subject to dower, unless barred by wife's assent to deed, or by a jointure or provision by will accepted in lieu of it; and all owned by wife at death and not devised by her or descended to issue by a former husband is subject to a tenancy by the curtesy. Acceptance by widow of jointure or provision is presumed unless she gives notice of refusal within one year. A non-resident wife is dowable only of lands owned by husband at decease. Tenancy by curtesy is independent of issue. Personalty is distributed by rule—widow entitled to same share as a child. If no issue, all property goes to surviving husband or wife.

Evidence. There is no disqualification of a party as a witness, except as to transactions, etc., with a dead or insane person, for or under whom the opponent sues or defends, and usual rules in case of coverture or confidential relations.

Executions from justice court may be stayed by bond for periods varying with amount; from a court of record only by security on appeal. There is no lien on chattels till levy and sale is on twenty days' notice. On realty, lien begins with docket of judgment or transcript from justice, or record court, in circuit court clerk's office of the county where the land lies; all papers or certified copy may be filed in county where land lies for enforcement of judgment. Sale is had on six weeks' notice, and sheriff's deed absolute issues after fifteen months without redemption. Supplementary proceedings lie after issue of execution and before or after return unsatisfied. Execution is issued, as of course, in favor of judgment creditor or his assignee, within five years after judgment; after five years, only on authority from the court.

Exemptions. (*See Homestead.*) Exempt chattels are clothing, bedding, stoves, cooking utensils and other furniture to value of $200; library; two cows, ten swine, two horses or mules (or one of either and a yoke of oxen), ten sheep and their wool, and a year's food for all exempt live stock; a wagon, a sleigh, a dray, a plow and $200 worth of other farm tools or tackle for teams; a year's provisions for debtor and family; tools and implements, or stock in trade, or both, up to $200; sewing machines for family use; printing materials and presses of a printer or publisher up to $1,500 (except that as to claims of laborers and servants for services, only $400 shall be exempt); patents, owned by the inventor; three months' earnings (not over $60 a month), if the debtor has a family to support; and all insurance money on exemptions. Most of these exemptions avail residents only. Corporations have no exemptions. Partners, however many, may take exemptions as individuals

from joint assets. None of above property exempt from execution or attachment in action for purchase money of the same property. If husband does not select exemptions, wife may.

False Pretenses may be committed by word or writing, and are punishable by fine or imprisonment.

Garnishment. (*See Attachment.*) This remedy lies, whenever attachment does, in any court, upon affidavit for it showing indebtedness and the debtor's lack of sufficient non-exempt assets to satisfy it. No undertaking is required. This is a common mode (as less costly than attachment) of testing an alleged fraudulent transfer or invalid assignment for creditors. All garnishees may be united in one summons, and be deemed severally proceeded against unless otherwise specified; money garnisheed must be paid into court; property garnisheed may be released on giving sufficient undertaking. Answer of garnishee is conclusive unless issue taken thereon. If so taken, security for costs may be demanded and trial had as in other actions, and examination of garnishee allowed. Garnishment may be released by proper undertaking in lieu thereof.

Holidays. First day of January, twenty-second day of February, fourth day of July, twenty-fifth day of December, thirtieth day of May, Thanksgiving Day, and general election day are legal holidays by statute, and whenever either of said days shall fall on Sunday the succeeding Monday is a legal holiday. A legal holiday known as "labor day" may be set apart by governor, and the first Monday of September is regularly so set apart.

Homestead. (*See Exemptions.*) Real estate of whatever value, not over one-quarter acre in a city or village, or forty acres for agriculture in the country, is exempt to the actually resident owner. So, too, of its insurance, when burned, or its proceeds when sold, and held not over two years for purchase of a new one. But it is subject to mechanics' and mortgage liens, created with the wife's assent, and it can not be conveyed without her signature (except that purchase money mortgage is good without wife's signature). On death of owner (unless widow is otherwise provided for to her satisfaction) it goes to her for life or widowhood; then, as other realty, to the heirs. (*See Descent, etc.*)

Insolvency. (*See Assignments for Creditors.*) An insolvent, independently of an assignment for his creditors, may procure a discharge as to creditors within (but not without) the State, by surrender of all non-exempt property, and on petition. The property is distributed to creditors through an assignee. On notice to creditors, and an examination of the debtor, in the absence of fraud, the discharge is granted.

Interest. The legal rate is 6 per cent; maximum contract rate, 10. Usury (except in bottomry and *respondentia* bonds) forfeits the whole interest if not yet paid; if paid, treble the unlawful excess may be recovered by suit within a year.

Judgments. (*See Executions and Limitations of Actions.*) Judgments in circuit court keep debts alive for twenty years, are liens on land for ten years, and bear legal interest. Judgments of foreclosure bear interest at rate stated in mortgage note, but shall not exceed the minimum rate of interest, i. e. 6 per cent. Transcripts of judgments recovered in justice court may be docketed in circuit court and thus become a lien. Judgments may be satisfied by attorney or judgment creditor within five years; afterward by judgment creditor only.

Limitations of Action are these: On sealed instrument, when cause of action accrues within the State, twenty years; when it accrues without the State, or on equitable cause of action, or a foreign judgment, ten years; on a municipal bond or other contract even when sealed, on any unsealed contract or liability at law, or trespass, trover, or replevin, six years; on action against a sheriff or other officer for violation of duty, three years; on action for a penalty or forfeiture, or for an injury to person or character, two years; on an action for equitable relief against fraud, within six years after discovery of the facts constituting the fraud; on an action for recovery of realty, ten years after the adverse possession begins, where occupant claims under a paper title; otherwise, twenty years. Absence from State, after cause of action accrued, suspends running of statute as does part payment, infancy, insanity, or imprisonment. In case of injury to person, no action can be brought unless notice in writing given within one year from time of injury, describing it and grounds on which claim is made, and there is a similar provision as to actions against railway companies for fires and injuries to animals.

Limited Partnerships. (*See Partnerships.*)

Married Women (*see Chattel Mortgages, Homestead*) have in general the same rights as other adults, except that they can not become liable as sureties without an express charge of the debt on their separate estate. A deed by a married woman without her husband's signature passes her entire estate in land, free of his tenancy by the curtesy. By statute she can deal with her husband in exchanging property, as with any other person. Women become of legal age at 21 years, but married women can make will at 18.

Mechanics' Liens. Any realty whereon labor or materials are used or furnished for any construction, repairs, or improvement is subject to a mechanic's lien thereon—limited to one acre in a city or village, and to forty acres elsewhere. The lien must be preserved by filing a petition in the circuit court, within six months after the date of the last item of work or materials, and by a suit to foreclose the lien within a year from the date of said item. Machinery may be removed in lieu of a sale of the land for the debt. The lien covers only the interest in the title of the person incurring the lien debt; but it is paramount to all other liens, securities, or transfers after date of first labor or materials furnished, even though such liens, etc., were made of record before the lien petition was filed. Mechanics' liens prorate from the proceeds, irrespective of order of origin or filing of their liens. A sub-contractor has the same right of lien, if he gives notice of his claim to the owner within sixty days after date of last item of work or materials. Liens may be assigned.

Mortgages. (*See Chattel Mortgages, Deeds.*)

Partnerships. There is no statutory regulation of general partnerships. Limited ones may be formed, to consist of general partners and special partners. The latter contribute a stated amount of capital and are liable for no losses beyond that. Public notice must be given of the formation of the firm, its members' names, their contributions of capital, etc.; the special partners must pay all their shares in cash, and must be strictly non-participating—else they become liable as general partners, but may examine into business and advise as to its management.

Probate Law. The jurisdiction of the county courts extends to probate of wills, granting of letters testamentary and of administration on the estates of all persons deceased, who were, at the time of their decease, inhabitants or residents of the same county, or had property in such county to be administered. Such jurisdiction also extends to appointment of guardians and trustees, and settlement and control of estates of minors and persons under guardianship. (*See Administrators.*)

Promissory Notes and Bills. By Chapter 356, Laws of 1899, the so-called Uniform Negotiable Instruments Act became the law in Wisconsin. Its general effect is to strengthen decidedly the negotiable character of commercial paper. The following are the principal changes in the Wisconsin law: 1. Protest may be made but is not necessary except in case of foreign bills of exchange. 2. If a place of payment is specified in the note it must be presented at that place. 3. The fact that a note is to be paid with exchange, with costs of collection or with attorney's fees, or bears a seal, does not affect its negotiability. 4. A holder who derives his title through a holder in due course and who is not himself a party to any fraud, duress, or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to such holder. 5. An instrument obtained by fraud, duress, force, or fear, or based upon an illegal consideration, is defective instead of void, but if the maker did not know the nature of the instrument, and could not have obtained such knowledge by the use of ordinary care, the title of the holder is absolutely void. Warehouse receipts are negotiable unless expressed not to be. Municipal orders, bonds, etc., are not negotiable unless expressly authorized by law. Days of grace are abolished. Damages on foreign bills 5 per cent, with costs and charges of protest. One action may be brought against all parties liable on a note or bill. Negotiable paper maturing on Sunday or holiday becomes due on the next succeeding secular or business day. Acceptance must be in writing and signed by the drawer, and if acceptance is not written on the bill when requested the bill may be treated as dishonored. Notes, bonds, or other contracts based in part or wholly upon money staked, lost, or won on gambling are absolutely void. Sections 176 and 1675 to 1684, inclusive, of the Revised Statutes of 1898 are repealed.

Replevin. Specific personalty may be recovered by this action, on an affidavit by or for plaintiff showing his title or right of possession and defendant's wrongful detention or taking. The limit of jurisdiction in justice court is $200. All cases above that must be in courts of record. Security in double its value for return of property and payment of damages is required in the latter but not in the former courts; and the defendant can regain possession of the property pending the suit by due security in his turn. In case of contest, allegations of affidavit must be proved as questions of fact.

Sales are *prima facie* invalid, unless accompanied by immediate and continued change of possession. Unless the vendee proves his good faith this presumption is absolute. Installment leases and contracts for sale reserving title to vendor till full payment must be written, and filed like chattel mortgages. (*See Chattel Mortgages.*) "Futures" in grain, etc., are void if intended by both parties only as a wager on prices; else, valid.

Statute of Frauds. Instruments affecting title or possession of realty must be in writing signed by grantor or his agent. Agreements not to be performed within a year, and those of suretyship, must be in writing, expressing the consideration and signed by the party to be charged. Contracts of sale for $50 or over are void unless written or there is partial delivery or payment.

Supplementary Proceedings. (*See Executions.*)

Taxes are levied about December 10, and must be paid about January 20, or interest and costs are incurred. If taxes not paid, and land not previously redeemed, the land is returned delinquent to county treasurer and sold on third Tuesday of May. The tax certificate issued therefor bears 15 per cent interest, and after three years (unless sooner redeemed) a deed is issued to the purchaser, which is absolute and cuts off all prior title. By recent statute (Laws of 1899, Chap. 355) a tax of 1 per cent in case of direct heirs and 5 per cent in case of collaterals is levied on gifts and inheritances of personal property of the value of $10,000 or over.

Wills. Any person over twenty-one and a married woman over eighteen years, of sound mind, may make a will, which must be signed by testator, or in his presence and at his request, and also attested and subscribed by two witnesses in his presence and at his request, and in the presence of each other. Nuncupative wills under certain strict conditions are allowed. Revocation is by usual modes of destruction or by writing executed under the formalities of a will.

SYNOPSIS OF THE LAWS OF WYOMING

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by E. W. MANN, Esq., Attorney at Law, Cheyenne. (*See Card in Attorneys' List.*)

Accounts. Parties commencing actions upon accounts for goods sold are required to furnish an itemized statement of such accounts to be attached to and filed with the pleadings. There is no provision in the law for a form of affidavit with which to make proof of a claim of that character, if the defendant makes default.

Acknowledgments must be made before a judge or clerk of a court of record, or before any county clerk, notary public, justice of the peace, or United States court commissioner, within this State. If made out of the State, before any officer authorized, by the State or Territory in which it is made, to take acknowledgments, before the clerk of any court of record, or before any commissioner appointed by the governor of this State for such purpose, provided that if such acknowledgment is not made before an officer having a seal, it must have attached thereto a certificate of the clerk of a court of record, or a county clerk of the same place, having a seal, certifying that the officer taking the acknowledgment is authorized to take the same, and that he believes that the signature appended to the acknowledgment is genuine. Every notary public, justice of the peace, and commissioner of deeds for Wyoming, who takes an acknowledgment to any written instrument to be recorded in any public office in Wyoming, shall add to his certificate the date when his commission or term of office expires. Conveyances must be signed in the presence of one subscribing witness. If any deeds, mortgages, or conveyances of lands, or of any interest in lands, be executed in any foreign country, government, kingdom, or empire, such deed, mortgage, or conveyance of land may be executed according to the laws of this State, and may be acknowledged before a consul general, consul, or vice-consul of the United States; and when so acknowledged the officer taking the acknowledgment shall certify the same over his hand and official seal, or the seal of the consulate to which he is attached, if there be any such seal; and in case he has no official seal, and there be no seal of his consulate, that fact shall be stated in the certificate; and no other or further authentication shall be required to entitle such instrument to record in this State. This provision shall also apply to powers of attorney executed in any such foreign country, government, kingdom, or empire.

Actions. The distinction between an action at law and a suit in equity is abolished and the district courts of the various counties have a general common law and equity jurisdiction. Justices of the peace have jurisdiction, except in cases where the title to land comes into controversy, to

the amount of $200. Non-residents of the State are required to furnish security for costs if application is made for that purpose, or to pay the costs of the action as they accrue. (*See also Courts and Suits.*)

Administration of Estates. All probate jurisdiction is vested in the district court of the county of decedent's domicile, or in the case of a non-resident, of the place where his property or the greater portion thereof is situated. Administrators, executors and guardians are appointed on petition and notice, the surviving husband, or wife, having preference of appointment ordinarily. Administrators and executors are required to furnish security to an amount equal to double the value of the personal property and the rents, issues and profits of the real estate. Guardians are required to give bond in such sum as may be prescribed by the court. Foreign executors can act here upon filing proof of their appointment as executor, and of the admission of the will to probate in the foreign jurisdiction. Administrators and executors are entitled to possession of all real and personal property and the income of all realty, except the homestead, during the period of administration. Claims against the estate of a deceased person should be presented to the executor, or administrator, for allowance within six months from the date of the letters testamentary, or of administration, and if such claims are not presented for allowance within one year from the date of such letters, they are barred. The law prescribes a form of affidavit to be made for proof of claims. Property exempt under the State exemption laws is applied to the support of the surviving husband or wife, and minor children of the deceased, and cannot be applied in payment of debts due from the deceased. Expenses of administration, last sickness and funeral constitute preferred claims. If the estate of the deceased does not exceed in value $1,500, the court is required to assign and set apart for the use of the widow and minor children, if any, the whole of said estate, after the payment of the expenses of the last illness of the deceased, funeral charges and expenses of administration, and no further administration is required.

Affidavits. Affidavits may be made before any officer authorized to administer oaths.

Aliens. The State constitution provides that no distinction shall ever be made by law between resident aliens and citizens as to the possession, taxation, enjoyment, and descent of property.

Appeals. Appeals may be taken to the supreme court directly from the district court, regardless of the amount involved, within two years from entry of judgment. Bills of exception must be settled either at the term of court at which the action is tried, or not later than the first day of the next succeeding regular term of court. The plaintiff in error must pay a sufficient amount to the clerk of the supreme court to secure the costs of the proceedings in error. If it is desired to stay execution pending the appeal, then an undertaking for that purpose must be given. Appeals may be taken from the judgment of a justice of the peace to the district court of the proper county within fifteen days after the rendition of judgment. The appellant is required either to pay all the costs of the cause appealed up to the time of the transmission of the papers to the district court, or to give bond in double the amount of such costs to the effect that he will pay the same in case judgment is rendered against him therefor in the district court, and such undertaking may be included in the undertaking provided for in case the appellant wishes to stay execution during pendency of the appeal. The case is tried *de novo* in the district court.

Arbitration. The law provides that all persons who have any controversy, except those relating to the possession or title to real estate, may submit such controversy to the arbitrament, or umpirage, of any person, or persons, to be mutually agreed upon by the parties, and they may make such submission a rule of any court of record in the State. The law further provides for process to compel the attendance of witnesses before the arbitrators, and for the enforcement of the award of the arbitrators when one is made.

Arrest and Bail. Arrest of the defendant in civil actions may be made on grounds very similar in character to those upon which a writ of attachment may be issued against the property of the defendant. The order for arrest of the defendant shall be made by the clerk of court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, stating the nature of the plaintiff's claim; that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the grounds for which an arrest is sought. The affidavit shall also contain the statement of facts claimed to justify the belief in the existence of one or more of such particulars. The order of arrest shall not be issued by the clerk until there is executed by sufficient surety of the plaintiff a written undertaking to the effect that the plaintiff will pay to the defendant all damages not exceeding double the amount of the plaintiff's claim stated in the affidavit which he may sustain by reason of the arrest if the order prove to have been wrongfully obtained. The defendant may be released upon payment by depositing with the sheriff, or in court, an amount equal to double the claim of the plaintiff, or by giving bail for that amount, as provided by law.

Assignments and Insolvency. An insolvent debtor may make an assignment in good faith to one or more assignees for satisfaction of creditors. No preference of creditors or payment of false or fraudulent claims is allowed. The assignment must be in writing, executed according to the laws of the State, and must be filed and recorded in the office of the county clerk of the county in which the assignor resides, or has his principal place of business, if he be a non-resident of Wyoming. Within fifteen days after the execution of any such assignment the assignee shall file a certified copy of the assignment and schedule in the office of the clerk of the district court of the county in which the debtor resides, or does business, and shall, before entering upon the execution of his trust, make oath that he will faithfully execute the same, and shall at the same time file with the clerk a written undertaking to the State of Wyoming, with at least one sufficient surety, in a sum double the value of the property assigned conditioned for the faithful discharge of the duties of his trust. The assignee then proceeds to close up the estate, convert the property into money, and make distribution to creditors. The district court exercises a supervisory power over the acts of the assignee. The judge of the district court may remove an assignee for good cause shown, or appoint a new assignee in case of a vacancy in the position. Any creditor accepting from the assignee his dividend shall release the assignor from all further liability for the debt on which payment was made. Claims of creditors must be presented to the assignee within six months after the date of the first publication of the notice of the appointment of the assignee. Wages due to employes of the assignor for three months prior to the date of assignment constitute preferred claims against the estate and must be paid first.

Attachments may issue against the property of persons who are non-residents of this State or are about to become non-residents or a foreign corporation; or when the defendant has absconded with intent to defraud his creditors; or has left the county of his residence to avoid the service of summons; or so conceals himself that a summons an not be served upon him; or is about to remove his property or a part thereof out of the jurisdiction of the court with intent to defraud his creditors; or is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors; or has property or rights in action which he conceals; or has assigned, removed, disposed of, or is about to dispose of his property or a part thereof with intent to defraud his creditors; or has fraudulently or criminally contracted the debt or incurred the obligation for which suit is about to be or has been brought. In order to obtain an attachment, the plaintiff, his agent or attorney, must make affidavit showing the nature of the plaintiff's claim, that it is just, the amount which the affiant believes that the plaintiff ought to recover, and the existence of any one of the grounds for attachment mentioned above, or that the affiant has good reason to believe and does believe that some one or more of said grounds (stating which ones) exists. The plaintiff must also give an undertaking with sufficient surety, who must be a resident property holder in the State, and be approved by the clerk of the court by whom the order of attachment is issued, in a sum equal to double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment if the order prove to have been wrongfully obtained. Garnishee process may be had in aid of attachment. A creditor may bring an action upon a claim before it is due and have attachment against the property of the debtor when a debtor has sold, conveyed, or otherwise disposed of his property with a fraudulent intent to cheat or defraud his creditors or to hinder or delay them in the collection of their debts; or is about to make such sale, conveyance, or disposition of his property with such fraudulent intent; or is about to remove his property or a material part thereof with the intent or to the effect of cheating or defrauding his creditors or hindering or delaying them in the collection of their debts; or where the defendant is about to become a non-resident of the State. An attachment authorized in case of a debt not yet due may be granted by the court in which the action is brought or by a judge thereof, but an affidavit and undertaking of the creditor similar to those required for attachment in case of a debt past due must be executed before the writ of attachment will be issued.

Banks. The legislature is prohibited from passing local or special laws chartering banks, insurance companies, and loan and trust companies. There is in the law a provision that shares of stock in National and other banks are subject to taxation, and certain provisions in the civil code in relation to a course of procedure for the purpose of preventing a banking corporation or its trustees or directors from making an improper disposition of the funds or other property of the bank, or violating any franchise of the corporation. All banks except National banks are required to make full statements at the end of each quarter, showing, under appropriate heads and in details, their resources and liabilities. The quarters end on the last days of March, June, September, and December, in each year. The statement is required to be filed in the office of the county clerk of the county in which the bank does business and in the office of the auditor of the State. In the case of a corporation, the report must be published in a newspaper. It is unlawful for a bank to receive deposits when insolvent.

Provision is made under the State law for the organization, management, and control of banks, banking associations, savings banks, and loan and trust companies. It is made the duty of the State examiner to examine and report upon the condition of all banks incorporated under State law once a year.

Bills of Exchange. (*See Notes and Bills of Exchange.*)

Bills of Lading. There is no statute specially relating to bills of lading.

Chattel Mortgages. Chattel mortgages are required by law to be executed and acknowledged in the same manner as mortgages of real estate. They are required to be filed, but not recorded, in the office of the county clerk of the county where the mortgaged property is situated. The lien of the chattel mortgage continues until the indebtedness thereby secured, or the last installment thereof, becomes due, and for sixty days thereafter. After that time it continues in force as between the parties thereto, but it ceases to be valid as against the creditors of the mortgagee and as against subsequent purchasers, or mortgagees, in good faith. The chattel mortgage may be renewed by filing, during the period of sixty days, an affidavit setting forth the amount still due and unpaid of the original indebtedness. This affidavit, when filed in the office of the county clerk, continues the lien of the mortgage in force for a period of one year, and a similar affidavit may be filed within sixty days after the end of the said period of one year, and each year thereafter, by means of which the lien of the mortgage is continued in force. Chattel mortgages are foreclosed by a sale of the mortgaged property, notice of which must be given by publication once each week for three successive weeks in a weekly newspaper published in the county in which the sale shall take place, or by posting notices in three public places in said county, if no newspaper is published therein. Contracts or leases providing for the sale of personal property dependent upon conditions are required to be in writing, signed by the vendee, or lessee, and filed in the office of the county clerk of the county where the property is.

Collaterals. There is no statute relating expressly to collaterals.

Contracts. Gambling contracts and contracts for alien labor are void under the statute, and contracts releasing employer from liability to employe for injuries. Under the statute relating to frauds and perjuries the following contracts, or some note, or memorandum thereof, are required to be in writing and subscribed by the party to be charged therewith: Every contract that by its terms is not to be performed within one year from the making thereof; every special promise to answer for the debts, default, or miscarriage of another person; every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry; every special promise by an executor or administrator to answer any demand out of his own estate; every agreement or contract for the sale of real estate, or the lease thereof, for more than one year; to charge any person upon, or by reason of a representation or assurance concerning the character, conduct, credit, ability, trade, or dealing of another, to the intent, or purpose, that such other may obtain thereby credit, money, or goods. Every contract for the sale of any goods, chattels, or things in action for the price of $50, or more, shall be void unless a note or memorandum of such contract is made in writing and be subscribed by the party to be charged thereby, or unless the buyer shall accept and receive part of such goods, or the evidences or some of them of such things in action, or unless the buyer shall at the time pay some part of the purchase money.

Conveyances. (*See Acknowledgments and Mortgages.*)

Corporations. Corporations may be formed by three or more persons for the purpose of carrying on manufacturing, mining, commercial, and other kinds of business, and also constructing wagon roads, railroads, telegraph lines, irrigating ditches, dealing in real estate, etc., and the incorporators are required to sign and acknowledge before some officer competent to take the acknowledgment of deeds duplicate certificates in writing, in which shall be stated the corporate name of said company, the object for which the company shall be formed, the amount of

capital stock of said company, the term of existence (not to exceed fifty years), the number of shares of which the said stock shall consist, the number of trustees, and their names, who shall manage the concerns of the company for the first year, and the name of the town and county in which the operations of said company are to be carried on. One of the certificates must be filed in the office of the county clerk of the county wherein the business of the company is to be carried on and the other in the office of the secretary of State. If three or more persons desire to form a company the object of which shall be to aid in the industrial or productive interests of the country, but without any purpose of direct gain to itself, then, in such case, such company shall not have a capital stock, and the certificate of incorporation shall so state, giving the reason therefor. The number of trustees for a corporation is not less than three nor more than nine, and the trustees must be stockholders in the company. The capital stock of domestic corporations shall not be taxed.

Courts. *Terms and Jurisdiction.* The Supreme court holds two regular terms annually at the capital of the State. Its business is principally of an appellate character. District court is held twice a year in each organized county, except Big Horn county, where it is held once a year. Said court has full common law and chancery powers. It has also exclusive jurisdiction in all probate matters and the administration, settlement, and distribution of the estates of deceased persons. Justices of the peace have jurisdiction in civil actions where the amount in controversy, exclusive of costs, does not exceed $200.

Days of Grace. Except as otherwise provided by statute, the three days following the day on which a negotiable instrument becomes due by its terms, are allowed as days of grace, unless the last of such days is Sunday or a legal holiday, in which case the next preceding business day shall be the last day of grace allowed. Negotiable instruments payable either immediately, or on demand, and bank notes, cheques, certificates of deposit, and bonds are not entitled to days of grace.

Depositions. The Code of Civil Procedure makes provision for taking depositions upon commissions to which are to be attached interrogatories and cross-interrogatories, but the law is not very specific in regard to the method of taking depositions in this way. Definite provision is made for taking depositions in actions pending in the district court upon notice to be served upon the opposite party, or his attorney of record. The notice must be served in time to allow the adverse party sufficient time, exclusive of Sunday, the day of service, and one day of preparation to travel, with the usual route and modes of conveyance to the place named in the notice, which must state the time and place of taking the depositions. Depositions may be taken before any officer authorized to administer oaths. The officer taking the depositions must annex thereto a certificate showing that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition was reduced to writing by some proper person, naming him; that the deposition was written and subscribed in the presence of the officer certifying thereto, and that the deposition was taken at the time and place specified in the notice. Depositions cannot be taken by a relative or attorney of either party to the case, or one who is otherwise interested in the event of the action or proceeding.

Descent and Distribution. In the case of parties owning property, dying and leaving no will, distribution of the estate is made as follows: If such intestate leave a husband, or wife, and children, or the descendants of any children, him or her surviving, one-half of such estate shall descend to such surviving husband or wife, and the residue thereof to such surviving children and descendants of children, as limited by law; if such intestate leave a husband, or wife, and no child, nor descendants of any child, then the real and personal estate of such intestate shall descend as follows, to wit: Three-fourths thereof to such surviving husband or wife, and one-fourth thereof to the father and mother of the intestate, or the survivor of them; provided, that the estate of such intestate, real and personal, does not exceed in value the sum of $10,000, and such intestate have a husband or wife and no child nor descendants of any child, then the whole thereof shall descend to and vest in the surviving husband or wife, as his or her absolute estate, subject to the payment of the debts of the intestate. Except in cases above enumerated the estate of any intestate descends and is distributed as follows: First, to his children surviving and the descendants of his children, who are dead (the descendants, collectively, taking the share which their parents would have taken if living.) Second, if there be no children, nor their descendants, then to his father, mother, brothers and sisters, and to the descendants of brothers and sisters who are dead (the descendants, collectively, taking the share their parents would have taken if living), in equal parts. Third, if there be no children nor their descendants, nor father, mother, brothers, sisters, nor descendants of deceased brothers or sisters, nor husband nor wife, living, then to the grandfather, grandmother, uncles, aunts, and their descendants (the descendants taking, collectively, the share of their immediate ancestors), in equal parts.

Divorce. Divorces are granted by the district court of the county where the parties, or one of them, reside, on the application of the aggrieved party in either of the following cases: 1. Adultery. 2. Physical incompetency at time of marriage, when same is continued to time of divorce. 3. Conviction of a felony and sentence therefor. 4. Willful desertion for the term of one year. 5. Habitual drunkenness. 6. Extreme cruelty. 7. When the husband for a period of one year has neglected to provide the common necessaries of life, and such neglect is not the result of poverty on his part which he could not avoid by ordinary industry. 8. When either party shall offer such indignities to each other as shall render his or her condition intolerable. 9. When the husband shall be guilty of such conduct as to constitute him a vagrant within the meaning of the law respecting vagrancy. 10. Conviction of one party of felony prior to marriage, when such fact was not known to the other party at the time of such marriage. 11 Pregnancy of the wife at the time of marriage by any man, not her intended husband, and without his knowledge. The party applying for the divorce must have resided in the State at least six months before commencing suit, unless the marriage was solemnized in the State, and the applicant shall have resided therein from the time of marriage to the time of filing the petition. No divorce is granted in any case where it appears that there was collusion between the parties to procure the same, nor when the party complaining is guilty of the same crime or misconduct charged against the other party.

Dower. Under the Territorial law formerly in existence and which has never been repealed, dower was abolished, and since the admission of Wyoming as a State no law has been enacted on that subject.

Execution may issue immediately after judgment rendered, and is returnable in sixty days from a court of record, and thirty days when issued by a Justice of the Peace. Provision is made for a stay of execution in justices' courts, for a period of thirty days on a judgment not exceeding $50, exclusive of costs, or a stay of four months on a judgment of $50 and not more than $100, exclusive of costs, and a stay of six months on a judgment in excess of $100, exclusive of costs. Provision is also made for a stay of execution in the district court for a period of six months from the time of the entry of judgment by the judgment debtor procuring one or more freehold sureties to enter into his recognizance, acknowledging themselves bail for defendant for the payment of the judgment, together with the interest and costs accrued, and to accrue. Provision is also made for a stay of execution in cases where an appeal or proceeding in error is taken to a higher court.

Exemptions. Household furniture, provisions, etc., for head of family residing with same, $500; tools, team, implements or stock in trade of mechanic, miner, or other person, kept for his trade or business, $300; library and instruments of professional man, $300; homestead actually occupied as such by head of family in country, 160 acres; in town, lot or lots in value $1,500; necessary wearing apparel of every person to the value of $150. Earnings of a judgment debtor to the amount of $50 where necessary to the use of a family supported wholly or in part by his labor. No property is exempt for a person removing or absconding from the State, and all persons claiming exemption must be actual, bona fide residents of the State. No article of property is exempt from attachment or sale on execution for its purchase price.

Fraud. A judgment may be vacated for fraud practiced by the successful party in obtaining it. It is not a ground for a judgment debtor to be excused for not answering in an examination in regard to his property. It is also a ground for attachment.

Garnishment. The laws relating to attachment and garnishment are similar in character and there is no provision for garnishment except when ground for attachment exists, and a bond must be furnished to obtain a garnishment in the same manner as to obtain an attachment. Garnishee process may be had in aid of execution after judgment, without such bond, and without affidavit, except such as may be necessary to lay the foundation for an order by the district judge for the examination of the judgment debtor or any person or corporation indebted to him.

Holidays. (*See Notes and Bills of Exchange.*)

Husband and Wife. The husband is not liable for the debts of the wife contracted before marriage, without an assumption in writing of such debts, but the estate of the wife is liable for debts of that character. Separate deed of the husband conveys no interest in the wife's lands. (*See Married Women.*)

Insolvency. (*See Assignments and Insolvency.*)

Interest. In the absence of express contract, all moneys, claims, or judgments draw interest at the rate of 8 per cent per annum. Any rate may be agreed upon in writing, not exceeding 12 per cent per annum. If any greater rate is agreed upon the lender forfeits all interest. Unsettled accounts draw interest after thirty days from date of last item.

Judgments are a lien on debtor's real estate within the county from the first day of the term at which judgment is entered, but judgments by confession and judgments rendered at the same term at which the action is commenced bind the debtor's real estate only from the time of entry, which lien continues for five years.

Liens. The law provides for liens of agistors and stable keepers, common carriers and warehouse men upon property entrusted to them to care for, and also for mechanics and material men for labor and materials furnished for the construction or repair of buildings, and also a lien for mechanics, artisans or other persons who may make, alter, repair or bestow labor upon any article of personal property at the request of the owner or party having possession thereof.

Limitations of Suits. On contracts not in writing, eight years, upon specialty or agreement in writing, five years; on all foreign judgments, or contracts made or incurred before debtor becomes a resident, within two years after he establishes residence in the State; recovery of lands, ten years. Revivor: Part payment or acknowledgment in writing.

Married Women. A married woman retains her property, both real and personal, may make a will, carry on business, sue and be sued, and retain her own earnings in the same manner as if sole. She may also vote and hold office. There is no right of dower under the State law.

Mortgages must be attested by one witness, acknowledged and recorded in the manner provided by law for the execution and recording of deeds, and are foreclosed by action at law, or by advertisement for six weeks. Real property sold under foreclosure of mortgage, either by decree of court or by advertisement, may be redeemed in six months from date of sale, upon payment of the amount for which the property was sold and ten per cent interest thereon.

Notes and Bills of Exchange are subject to a State law which substantially enacts the law merchant. The 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July, the day appointed by the President of the United States or the governor of the State as a fast or Thanksgiving Day, the 25th day of December and the day in the spring appointed by the governor of the State as Arbor Day, and all days on which regular State and county elections are held are legal holidays.

Powers of Attorney. When executed for the purpose of enabling the attorney in fact to convey real estate, powers of attorney must be executed with the same formalities as a deed, and they should be recorded in the office of the county clerk of the county in which the land conveyed by virtue of such instrument is situated.

Probate Law. (*See Administration of Estates.*)

Protest. Protest must be made by a notary public or any other officer authorized to administer oaths. It must be made by an instrument in writing giving a literal copy of the bill of exchange with all that is written thereon, or annexing the original, stating the presentment and the manner in which it was made, the presence, or absence of the drawee, or acceptor, as the case may be, the refusal to accept or pay, or the inability of the drawee to give a binding acceptance, and in case of refusal the reason assigned, if any, and finally protesting against all the parties to be charged.

Replevin. The action for replevin lies both in the district court and in the justice court for the purpose of obtaining the possession of specific personal property. In order to obtain a writ of replevin, it is necessary to file an affidavit showing a description of the property claimed, that the plaintiff is the owner of the property, or has an interest therein, and if the ownership, or interest is special or partial, the fact should be stated; that the property is wrongfully detained by the defendant and that it was not taken on process issued against the plaintiff, or if taken under such process that the property was exempt from execution, and that it is not held for any tax legally assessed, or levied against the plaintiff. In the district court the plaintiff is not required to give a bond until after the property has been taken by the sheriff, and if after the property is so taken the plaintiff fails to give the required bond within five days, then the property is returned to the defendant. The defendant may within forty-eight hours after the property is taken, regain possession of it by giving an undertaking as provided by law, conditioned for the re-delivery of the property if adjudged. In the justice court the plaintiff is required to file a bond, or undertaking, to the defendant in not less than double the amount of the value of the property, as stated in the affidavit of the plaintiff, before beginning his action.

Suits. There is but one form of action, and the code of procedure is very similar to that of Ohio.

Taxes become due and payable on the third Monday in September in each year, and the taxpayer should pay the entire amount of his taxes after that time and before the thirty-first day of December following. In all cases where the tax is not paid on the thirty-first day of December succeeding the levy thereof, the amount of the tax charged against any taxpayer so failing to pay such tax shall become delinquent from that day. A penalty of 10 per cent on the amount unpaid is added to all taxes when they become delinquent. Delinquent taxes draw interest at the rate of 25 per cent per annum until paid or collected by distress and sale. Taxes upon real property are made a perpetual lien thereupon, and taxes due from any person upon personal property are a lien upon any real property owned by such person. Both personal and real property may be sold for taxes in the manner provided by law. Real property may be redeemed from tax sale at any time within three years after the sale, by payment of the amount for which it was sold, 15 per cent of the same, interest on the whole amount at the rate of 10 per cent per annum, and subsequent taxes, with 10 per cent per annum interest thereon, unless such subsequent taxes have been paid by the person redeeming.

Transfer of Corporation Stock. The stock of a corporation is transferable in such manner as shall be prescribed by the by-laws of the company, provided such by-laws be just, reasonable, and not in conflict with the law of the State.

Wills. Any wills to be valid must be in writing, or typewritten, witnessed by two competent witnesses, and signed by the testator, or by some person in his presence, and by his express direction, and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will. No subscribing witness to any will can derive any benefit therefrom unless there be two disinterested and competent witnesses to the same, but if without a will such witness would be entitled to any portion of the testator's estate, such witness may still receive such portion to the extent and value of the amount devised. Wills are admitted to probate in the court of the proper county upon petition being filed, and after notice by publication for not less than ten, nor more than thirty, days from the production of the will. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the district court having jurisdiction of the estate, or to the executor named in the will.

SYNOPSIS OF THE LAWS OF BRITISH COLUMBIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

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(See Card in Attorneys' List.)

Absconding Debtors. Where plaintiff's claim is a debt exceeding $100, a judge of the supreme or county court may order a writ of attachment to issue against the real and personal property of an absconding debtor. Plaintiff must first file an affidavit, showing the cause of action, and that he has good reason to believe, and does believe (stating reasons), that the debtor has left the Province and gone to some other place to which the debtor is believed to have fled (or that deponent can obtain no information as to whither he has fled), with intent to defraud the plaintiff of his just dues or to avoid arrest or service of process, and was at the time of his so departing possessed of real or personal property, credits or effects not exempt by law from seizure, to his own use and benefit in the Province; which affidavit must be verified by the affidavit of two other credible persons, that they are well acquainted with the absconding debtor and have good reason to believe, and do believe (stating reasons), that such debtor has departed from the Province with intent to defraud the plaintiff, or to avoid arrest or service of process. In the writ of attachment, when issued, is also incorporated a summons to defendant, upon which, after service, the plaintiff may proceed to judgment in the usual way. After seizure of defendant's property under the attachment, he is entitled to have the same restored to him at any time before execution is issued, on his disclosing a good defense, accounting for his delay and putting in special bail. The affidavits upon which the attachment is ordered may be sworn beyond the Province (see Affidavits), but the subject matter of the claim must be within the jurisdiction.

Accounts should be stated with items and dates, and where against insolvent estate or estate of deceased person should be verified by affidavit or solemn declaration, accompanied by such vouchers as the nature of the case admits of, and stating what securities, if any, are held for the claim. *(See Affidavits, Assignments.)*

Acknowledgment of Deeds, Etc. (or proof by subscribing witness), for registry in British Columbia, if taken within the Province, may be before the registrar or deputy registrar of titles, a stipendiary magistrate or justice of the peace, a judge or registrar of a court having a seal, or a notary public. If without the Province and within British Dominions, before any judge, clerk, or registrar of a court having a seal, a notary public, any magistrate of any town or district within such Dominions having a seal of office, or a commissioner appointed for taking acknowledgments out of the Province. If taken or acknowledged without British Dominions, may be before any British ambassador, charge d'affaires, minister, consul, or consular agent appointed to reside in the country where the acknowledgment or proof is taken; any judge of any court of record having a seal, or any notary public practicing in such country, certified to be such by a British ambassador, charge d'affaires, minister, consul, or consular agent, or by the governor or secretary of the State, Province, or Territory. The fact of the taking of such acknowledgment must appear by a certificate under the hand and official seal of the officer taking the same, endorsed upon or attached to the instrument. Such certificate must show that the person making the acknowledgment or proof (being either personally known to the officer or his identity proved by the oath or affirmation of a competent witness) has appeared before the officer (stating when) and acknowledged that he is the person mentioned in the instrument as the maker thereof and whose name is subscribed as party thereto, that he knows the contents thereof and executed the same voluntarily, and that he is of the full age of twenty-one years. In the case of execution by a married woman, the certificate, in addition to the aforegoing must show that such married woman was first made acquainted with the contents of the instrument and the nature and effect thereof, and that she acknowledged, on examination apart from and out of the hearing of her husband, that she knows the contents and understands the nature and effect thereof; that she executed the same voluntarily, without fear or compulsion or undue influence of her husband, and that she is of full age and competent understanding and does not wish to retract the execution of such instrument. Deeds and instruments by corporations should be executed and acknowledged by the secretary; and the certificate of acknowledgment must state, in addition to such of the above matters as are applicable, that such secretary acknowledged that he is the person who subscribed his name and affixed the seal of the corporation, as the secretary, to such instrument, and that he was first duly authorized to subscribe and affix the said seal to the same. Forms of acknowledgment:

(1) *For Maker of Deed.*

I hereby certify that....., personally known to me,* appeared before me at.....in the.....of....., on the.....day of....., A. D. 19..., and acknowledged to me that he is the person mentioned in the annexed instrument as the maker thereof, and whose name is subscribed thereto as party, that he knows the contents thereof, and executed the same voluntarily, and that he is of the full age of twenty one years.

In testimony whereof I have hereunto set my hand and seal of office at..... this.....day of....., in the year of our Lord one thousand nine hundred and.....

(2) *For Attorney.*

I hereby certify that....., personally known to me,* appeared before me at (as in form 1) and acknowledged to me that he is the person who subscribed the name of.....to the annexed instrument as the maker thereof; that the said..... is the same person mentioned in the said instrument as the maker thereof, and that he the said..... knows the contents of the said instrument and subscribed the name of the said..... thereto voluntarily, as the free act and deed of the said ..... (grantor), and that the said ..... (grantor) is of the full age of twenty-one years.

In testimony, etc. (as in form 1).

(3) *For Married Woman.*

I hereby certify that A. B., personally known to me* to be the wife of C. D. appeared before me at (as in form 1), and being first made acquainted with the contents of the annexed instrument and the nature and effect thereof, acknowledged, on examination, and apart from and out of the hearing of her said husband, that she is the person mentioned in such instrument as the maker thereof and whose name is subscribed thereto as party; that she knows the contents and understands the nature and effect thereof; that she executed the same voluntarily, without fear or compulsion or undue influence of her said husband, and that she is of the full age of twenty-one years and of competent understanding, and does not wish to retract the execution of the said instrument.

In testimony whereof, etc. (as in form 1).

(4) *For Witness.*

I hereby certify that A. B., personally known to me,* appeared before me at (as in form 1) and acknowledged to me that he is the person whose name is subscribed to the annexed instrument as witness, and that he is of the full age of sixteen years; and having been duly sworn by me, did prove to me that C. D. did execute the same in his presence voluntarily.

In testimony, etc. (as in form 1).

* Where the person making any of the above acknowledgments is not personally known to the officer taking the same, instead of the words "personally known to me" insert the words "proved by the evidence on oath (or affirmation) of E. F."

Actions are commenced by a writ of summons, and conducted, in the supreme court, under the Judicature Act and Rules, and in the county courts under a system of practice closely analogous thereto. A defendant served with a supreme court summons in the Province must enter an appearance within eight days, inclusive of the day of service. Where served out of the Province (for which a judge's order must be had) the time limited for appearance is fixed by the judge, regard being had to the distance from British Columbia. Service beyond the jurisdiction may be also ordered in county court actions. Where the writ is specially endorsed for a debt or liquidated demand (or in the county court where a "default summons" is issued for a similar demand), in default of appearance final judgment may be signed and execution issue at once, without further proof of claim. If the defendant appears to a specially endorsed writ in the supreme court (or in the county court in an action for recovery of a debt or liquidated demand), the plaintiff may, notwithstanding the appearance, apply to a judge for leave to sign final judgment forthwith, such application being founded on an affidavit proving the claim and showing that there is no bona fide defense; if the defendant thereupon fails to show a defense or pay the amount claimed into court pending the result of the action, judgment may be forthwith entered against him, and execution issue as in other cases.

Administration of Estates of Deceased Persons. There are no separate courts of probate, but county courts have, within their respective districts, concurrent jurisdiction with the supreme court, to grant administration or otherwise act in probate matters, where the personal estate of the deceased does not exceed $2,500. In larger estates the supreme court has sole jurisdiction. Persons taking out administration must furnish security for the due performance of the trust by furnishing a bond with two sureties, in double the amount of the personal estate. Creditors rank equally upon estates of deceased persons (subject to any security they may hold), there being no priority of specialty debts over simple contract debts. The executor of a deceased testator, unless so empowered by the will, has no authority to deal with real estate or the rents therefrom, or to apply the same in payment of debts, and the courts have no power to confer such authority; but the real estate of a person dying intestate may be sold, leased, encumbered, or otherwise disposed of, by the order of a judge of the supreme court, on the motion or petition of any heir, personal representative, creditor, or other person interested. Where a person dies intestate as to personal property, or having appointed an executor resident out of the Province, administration may be granted to the official administrator. Claims against the estates of deceased persons should be presented to the executor or administrator, verified by affidavit or declaration made before a proper officer. *(See Accounts, Affidavits.)* The personal estate is primarily liable for the debts of the deceased, and must be exhausted before the real estate is available therefor. *(See also Distribution, Probate, Succession Duties.)*

Affidavits, Affirmations, and Declarations may be sworn or made abroad, for use in British Columbia, before a commissioner authorized to administer oaths in the supreme court of judicature in England; a judge of any of the superior courts of England, Ireland, or Scotland; a judge of any of the county courts of England or Ireland, within his county; a notary public, certified under his hand and official seal; the mayor or chief magistrate of any city, borough, or town corporate in Great Britain or Ireland, or in any British colony without Canada, or in any foreign country, certified under the common seal of such city, borough, or town corporate; a judge of any court of record or of supreme jurisdiction in any British colony or dependency without Canada, or in any foreign country; if made in any British possession in India, before any magistrate or collector, certified to have been such under the hand of the governor of such possession; if made in Canada, before any judge, prothonotary, notary public, or commissioner for taking affidavits in, or the clerk of a court of record in Canada or any Canadian Province; or before any stipendiary magistrate in the Territories of Canada; or

before any British consul, vice-consul, or consular agent, exercising his functions in a foreign place. (*See Evidence.*)

Agents and Factors. The general law of agency (outside of particular statutes) is the same as in England and in the United States. Under the Provincial Act, an agent entrusted with the possession of goods or of the documents of title thereto (i. e. bills of lading, warehouse receipts, etc.,) is deemed to be the owner thereof for the following purposes: 1. To make a sale thereof and receive payment therefor, notwithstanding that the purchaser has notice that he is dealing only with an agent. 2. To entitle the consignee of goods consigned by such agent to a lien thereon for any money or negotiable security advanced by him to or for the use of such agent, or received by the agent for the use of the consignee, as if the agent were the true owner of the goods. 3. To give validity to any contract by way of pledge, lien, or security, bona fide made with such agent, either for an original or continuing advance or loan made upon the security of the goods or documents of title. 4. To make such contract binding upon the owner, although the person claiming the lien or pledge had notice of the agency. (*See also Powers of Attorney.*)

Aliens have the same capacity as natural-born British subjects to take, hold, enjoy, recover, convey and transmit title to land and real estate of every description in British Columbia.

Appeals. (*See Courts.*)

Arbitration. In general, if no other mode is provided, a reference is to a single arbitrator. If to two arbitrators, the two may appoint an umpire. If either party neglect to appoint an arbitrator within seven days after notice so to do, a supreme court judge may appoint one for him, on motion by the other party, after notice. Arbitrators have power to administer oaths and enforce attendance of witnesses by subpœna. An award may, by leave of the court, be enforced in the same manner as a judgment or order of the supreme court. An appeal from an award lies to the supreme court, and must be brought within two months.

Arrest. In actions in the supreme or county court, the defendant may be arrested in the first instance on a writ of capias, where the claim is for debt or damages amounting to $100 or upward. Such writ issues on a judge's order, upon the plaintiff filing an affidavit showing a cause of action against the defendant to the amount of $100 or upward, or that he has sustained damages to that amount, and that there is probable cause for believing that the defendant is about to quit the province unless forthwith apprehended. The amount of bail is fixed by the judge, or defendant may regain his liberty on making deposit of the amount claimed, together with costs, pending the result of the action. A defendant may be arrested after judgment recovered for $100 or upward, on the plaintiff showing, by affidavit, the fact and amount of the judgment, and satisfying the judge that the defendant is about to quit the Province with intent to defraud his creditors generally, or the plaintiff in particular, or has parted with his property or made some secret or fraudulent conveyance thereof to prevent its being taken in execution. A defendant may be discharged from arrest after judgment on satisfying the judge (after notice to the plaintiff) that he bona fide has no means or ability to pay the amount of the judgment or any part or further part thereof; such discharge will not be ordered where there is evidence of *mala fides* on his part, either since the judgment (as by concealing his property) or in originally incurring the liability upon which the judgment is founded. When a debtor is imprisoned on a writ of capias, the plaintiff must pay to the sheriff, in advance, $3.50 per week for the debtor's maintenance while imprisoned. (*See Courts*, as to examination of judgment debtor after judgment.)

Assignments for Benefit of Creditors. Preferential assignments are void. A deed executed by any person, conveying property to a trustee for the purpose of paying all the creditors of such person, ratably and without preference or priority, their just debts, shall be good and valid if its construction and effect accord with its expressed purpose; and if executed by the trustee or one of the trustees within seven days after execution by the debtor shall not be set aside or defeated on any account except actual fraud. A description of the property conveyed as "all my personal estate, credits and effects which may be seized and sold under execution, and all my real estate," is sufficient to vest in the trustee all the real and personal property, rights, credits and effects, vested or contingent, of the debtor, save such as are by law exempt from seizure under execution. An assignment for the benefit of creditors has no effect until deposited for record in the registry office of the district in which the debtor resides or has his principal place of business. When so deposited it binds all lands of the debtor in the province, and takes priority over all judgments and executions not completely satisfied by payment, excepting registered judgments. (*See Judgments.*) Notice of the assignment must be published by the trustee in the *B. C. Gazette* and a daily newspaper, within fourteen days after its execution by the debtor, and a meeting of creditors called within ten days after the date of the assignment. Creditors must furnish particulars of their claims, proved by affidavit or declaration (*See Affidavits. Accounts*), stating what securities, if any, are held for their claims, together with such vouchers as the nature of the case admits of. On petition of any creditor (supported by affidavit) a trustee may be removed by a judge of the supreme court, and another appointed; and such judge, with the consent of a majority in number, representing three fourths in value of the creditors, may expunge any condition or stipulation from the assignment or vary any trust declared or created thereby. *Wages.* All persons employed by the debtor at the time of, or within one month before, the assignment are entitled to be paid three months' wages or salary in full (if owing) in priority to claims of general creditors, and may rank on the estate for any balance as ordinary creditors.

Attachment. (*See Absconding Debtors, Courts, Garnishee.*)

Attorneys. (*See Solicitors.*)

Banks and Banking are not within the jurisdiction of the Provincial legislature, but are dealt with by the Canadian Federal Parliament, and the law is the same for all the provinces. (*See Nova Scotia, same subject.*)

Bills of Exchange and Promissory Notes. The law on this subject is governed by the Canadian Federal Parliament, and is the same for all the provinces. (Canada Bills of Exchange Act, 1890.) Bills and notes are negotiable, and the general law is almost identical with that of England, and much the same as in most of the United States of America. Three days' grace are allowed on all bills and notes, except when payable on demand. Presentment for payment should be made when due, and notice of dishonor given or mailed within one day, in order to hold the indorser or drawer, but these steps are not necessary in order to hold the acceptor of a bill or maker of a note. Unpaid bills and notes bear interest at 6 per cent from the time of maturity, whether so expressed or not. A bill or note maturing on a bank holiday (i. e., Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Birthday of a Sovereign, Dominion Day (July 1st), or any day appointed by proclamation as a general holiday, such as Thanksgiving Day) is payable on the first banking day following; and when Christmas, New Year, Dominion Day, etc., falls on a Sunday, the following day is observed as a bank holiday. (*See Protest.*)

Bills of Lading and Warehouse Receipts are transferable by indorsement and delivery, and the indorsee or consignee is entitled to the same rights and subject to the same liabilities in respect of the goods represented thereby as if the contract had been made with himself. Banks may take bills of lading and warehouse receipts as collateral security for advances made *at the time*, and the security is not affected by the renewal of any bill or note given therewith. Upon default, in payment of the amount secured, the goods represented by such collateral security may be sold, after notice. Stoppage *in transitu* may be exercised. (*See Agents.*)

Bills of Sale and Chattel Mortgages. Every bill of sale, whether absolute or conditional, and every schedule or inventory annexed, or a true copy thereof respectively, and of every attestation of the execution, together with an affidavit of the time of such bill of sale being made or given and a description of the residence and occupation of the person making or giving the same (or the person against whom process shall have issued if given under execution of process), shall be registered within twenty-one days after execution thereof in the office of the county court registrar of the district wherein the goods affected are situate; non compliance with these requirements renders the bill of sale void as against creditors, sheriff's officers, or subsequent purchasers or mortgagees in good faith. Where a bill of sale is given subject to any defeasance, condition, or declaration of trust, the same must be written on the same paper as the bill of sale, and before it is registered. A bill of sale expires in five years from registration, unless previously renewed by filing an affidavit, declaring it to be still a subsisting security, and showing the amount still due thereon and secured thereby, and the names, residences, and occupations of the parties thereto, as stated therein, with the date of its primary registration.

Chattel Mortgages. (*See Bills of Sale.*)

Collateral Securities. (*See Bills of Lading and Warehouse Receipts.*)

Collection, Solicitors' Commission on. In the absence of special agreement a solicitor may charge his client a commission on ordinary collections, where no legal proceedings are taken, as follows: Up to $250, 10 per cent; larger amounts, 10 per cent on amount up to $250 and 5 per cent on balance. On difficult collections larger commissions are sometimes charged, according to circumstances.

Commissions Issued by Foreign Courts to Take Evidence in British Columbia. Upon application to a judge of the supreme or county court he may order the evidence required to be taken before the person named in and in the manner directed by the commission, and may command the attendance of witnesses, production of documents, etc. Such an order may be enforced in the same manner as an order made in a cause pending in the province.

Commissions to Take Evidence may be granted in suits pending in the supreme or county courts, where the witness to be examined is dangerously ill, or resident beyond the province, or about to quit the Province. The commission, when issued, contains full instructions to the commissioner as to its mode of execution. The depositions of witnesses examined under such commissions may be read in evidence at the trial only where, at the time of the trial, the witness is dead or out of the Province, or unable, through sickness or other infirmity, to attend.

Companies may be incorporated by special act of the legislature, or (except railway and insurance companies) under the general "Companies Act, 1897," in the latter case by the execution (by not less than five persons) and filing of a memorandum of association, according to the requirements of the act. There are no statutory provisions fixing the residence and number of directors, except where no provision is made by the rules of the company itself. Extra-provincial companies incorporated in Great Britain and Ireland, or in any province of Canada, may be *licensed* to do business in British Columbia. Extra-provincial companies incorporated elsewhere than as above mentioned, before doing business in British Columbia, must be *registered*. The Government fees are the same for incorporation, license, or registration, and vary according to the amount of capital: For $10,000 capital the fee is $25; for $25,000, $40; $50,000, $52.50; $100,000, $77.50; $200,000, $127.50; $300,000, $177.50; $400,000, $227.50; $500,000, $257.50; $1,000,000, $402.50. In each case, whether of incorporation, license, or registration, there must be added to the above from $20 to $30 for the advertising required by statute. Extra-provincial companies can only be licensed or registered in the province *where by their charter they have authority to carry on business in British Columbia*. Where this is lacking the best course is to be reincorporated in this province, the cost being the same as above stated. Extra-provincial companies registered or licensed in British Columbia have the same privileges and are subject to the same liabilities as if incorporated in the province. Any extra-provincial company carrying on business in British Columbia without having been licensed or registered is liable to a penalty of $50 per day for the time during which business is so carried on. In order to be licensed or registered, an extra-provincial company must petition therefor under the common seal of the company (to registrar of joint stock companies) and file with such petition: 1. A verified copy of the charter and regulations of the company. 2. An affidavit or declaration that the company is still in existence and authorized to transact business under its charter. 3. A copy of the last balance sheet of the company, and auditor's report thereon. 4. A duly executed power of attorney, under the common seal, empowering some person, therein named and residing in the city or place where the head office of the company in this province is situated, to act as its attorney, and to sue and be sued, plead or be impleaded in any court, and generally on behalf of such company and within the province to accept service of process and receive all lawful notices, and to do all acts and to execute all deeds and other instruments relating to the matters within the scope of the power of attorney and of the company to give to its attorney (and in case of *registration*, to issue and transfer stock). Forms of such power of attorney will be provided by the registrar.

Mining Companies (no others), whether incorporated, licensed, or registered, may entitle themselves to issue their shares below par, as "fully paid up and non-assessable," and holders of such shares are not liable for assessments beyond the amount actually paid thereon. In such case the words "Non-personal Liability" must appear on the corporate seal, and on all certificates, prospectuses, contracts and documents of the company. In other cases holders of shares in limited companies are liable to contribute to the difference between the amount actually paid thereon and the face value of their shares, but no further. A company may acquire and hold real and personal estate, by gift, purchase, as mortgagees or otherwise, and deal therewith as fully and freely as private individuals. Companies may be wound up under the Canadian Federal Winding-up Act (Revised Statutes of Canada, 1886, Ch. 129).

Deeds given by Companies. (*See Acknowledgments; see also Powers of Attorney.*)

Conditional Sales of Goods. Receipt notes or hire receipts must be filed within twenty-one days with the Government agent of the district (or if on Vancouver Island with the Registrar-General), and a copy left with the vendee, otherwise they are void as against subsequent purchasers or mortgagees. Vendors must furnish full information respecting balance

due, terms of payment, etc., within five days after demand therefor by proposed purchaser or person interested. Where the vendor takes possession for breach of condition, he must retain the article so taken for twenty days, before re sale, during which time the vendee may redeem, on paying the amount in arrears with interest and expenses; and where the value exceeds $30, five days' notice of sale must be given, which may run concurrently with the twenty days above mentioned.

Contracts. (*See Frauds, Statute of.*)

Corporations. (*See Companies.*)

Costs of Attorneys. (*See Solicitors, Commissions.*)

Costs, Security for, must be given in supreme court actions, if demanded, where the plaintiff resides outside British Columbia, or is an extra-provincial corporation, unless the plaintiff is the owner of real estate in the province. (*See Companies.*) The amount is fixed by a judge in each case, but $150 is the least amount usually ordered in supreme court actions. In county court actions security to the satisfaction of the registrar *must* be given, before issue of summons, in all cases where the plaintiff is a non-resident of the Province. In the last mentioned case the registrar usually requires a cash deposit of $25.

Courts and Their Jurisdictions. Small debts courts (presided over by police and stipendiary magistrates) have jurisdiction within their districts, concurrently with the county courts and supreme court, in actions of debt, where the demand does not exceed $100, but have no jurisdiction in tort nor where the title to land comes in question. After judgment execution issues against goods only, but where the judgment exceeds $50, it may be transferred to the county court, and execution issue thereout against the real estate of the judgment debtor. After judgment in small debts courts, garnishee or attachment may be obtained against debts due to the judgment debtor by third persons. (*See Garnishee.*) The judgment debtor may also be examined on oath as to his property and assets liable to be taken in execution, and committed to prison for non-attendance at the examination, or non-disclosure, or on the ground of his having obtained credit by false pretenses or without reasonable expectation of being able to pay, or having transferred or concealed his property in fraud of creditors. The limit of imprisonment in such case is twenty days, and such imprisonment does not extinguish the debt. An appeal from the decision of a small debts court lies to the nearest county court or to a judge of the supreme court, and notice of appeal must be given within forty-eight hours. County courts have jurisdiction, concurrently with the supreme court, in personal actions for debt or damages, up to $1,000; in ejectment where the annual value of the premises does not exceed $300; in replevin where the goods do not exceed $1,000 in value and the title to land does not come in question; equitable jurisdiction (including trusts, foreclosure, specific performance, injunctions, accounts, etc.) up to $2,500; jurisdiction in probate matters where the personal estate does not exceed $2,500. County courts have no cognizance of actions for malicious prosecution, libel, slander, criminal conversation, seduction, breach of promise of marriage, or against justices of the peace for anything done by them in the execution of their office; but such actions may be removed to the county court, when brought in the supreme court, on the defendant showing that the plaintiff has no means to satisfy any judgment for costs that may be recovered against him. By consent of parties, jurisdiction may be conferred on the county courts to try any action, and by the mining Acts county courts are given unlimited jurisdiction in the mining districts, concurrently with the supreme court, over all questions arising out of mines and mining transactions. Provision is made for garnishee or attachment of debts owing to the judgment debtor by third persons, either before or after judgment (*see Garnishee*); for the examination on oath of, and discovery by, either party before trial; for the examination on oath of the judgment debtor, after judgment, as to his property and assets, in which case an order may be made for the payment of the judgment by installments or otherwise, or the judgment debtor may be committed to gaol, for not more than three months, on the same grounds as in similar applications in small debts courts (*supra*). (*See also Actions, as to "default summons" and "speedy judgment."*) In the county court, as in the supreme court, execution may issue only against goods, where the judgment does not exceed $100, but the judge may order defendant's lands to be sold where judgment is over $100, for a greater amount (*see Execution*). An appeal lies, with or without special leave according to the nature of the judgment, to the supreme court, from any judgment or order of a county court, whether interlocutory or final. The supreme court has jurisdiction over all actions, civil and criminal, arising in the Province, and is vested with all the powers of the courts of common law, chancery, and probate. Courts of assize, for criminal trials, are held in the various districts at specified intervals. Civil causes may be set down for trial at any time. Provision is made for garnishee or attachment of debts due to the judgment debtor by third persons (after judgment only); for examination on oath of and discovery by either party before trial; for examination, after judgment, of judgment debtor as to his property and assets, and for his commitment, on the same grounds as in similar applications in small debts courts (*supra*); and for "speedy judgment" where there is no bona fide defense to an action for a liquidated demand and an appearance is entered by the defendant in order to gain time (*see Actions*). An appeal lies to the full court from any order or judgment of a judge. The full court for the hearing of appeals sits at Victoria and at Vancouver alternately. Appeals from interlocutory judgments or orders must be brought within eight days, and from final judgments or orders within three months; security for the costs of appeal must be given, the amount of which is fixed by a judge. An appeal lies from the judgment of the full court to the supreme court of Canada, at Ottawa, and to the Judicial Committee of the Privy Council, England. (*See also Actions, Arrest, Costs, Evidence, Execution, Garnishee, Judgments, Probate, Replevin.*)

Days of Grace. (*See Bills of Exchange.*)

Deceased Persons, Claims Against. (*See Administration.*)

Deeds, Mortgages, and Registration. Deeds, mortgages, and other transfers and charges affecting lands need not necessarily be under seal, except in the case of bodies corporate, but it is advisable to so have them. They must be registered in the registry office of the district wherein the lands to be affected lie, in order to be valid as against bona fide subsequent purchasers or mortgagees. Priority of registration creates priority of title, and purchasers, for valuable consideration, of registered real estate or registered interest therein are not affected by notice, express, or implied, of any prior unregistered title affecting the same, save only leasehold interests in possession for a term not exceeding three years. Want of consideration alone will not invalidate a registered voluntary conveyance executed in good faith. A will can not be registered until probate thereof has been granted. The execution of instruments requiring to be registered must be first proved or acknowledged before the proper officer. (*See Acknowledgments.*) Short, condensed forms of deeds, leases, and mortgages are provided by statute, the use of which is not obligatory, though advisable, where practicable. *Deeds given by Companies, see Acknowledgments.* (*See also Land Registry, Leases, Judgments.*)

Depositions. (*See Commissions to Take Evidence.*)

Descent of Real Property. The real property of a person dying intestate descends directly to the heirs, and is only made available for creditors of the deceased by special application to the court. (*See Administration.*) Undevised real estate is subject to the widow's dower. (*See Dower.*) The order of descent is as follows: 1. To the lineal descendants of deceased, and those claiming under them, per stirpes. 2. If no lineal descendants, then to the father, unless the estate is derived through the mother, when she takes, if living; in such case if the mother be dead, then to the father for life, reversion to brothers and sisters of intestate, and their descendants, equally, and if no brothers or sisters or their descendants, then to the father absolutely. 3. If no lineal descendants and no father (or no father entitled to inherit), then to the mother for life, reversion to the brothers and sisters of the intestate and the descendants of those dead, equally; if no brothers or sisters or their descendants, then to the mother absolutely. 4. If no father or mother living, the collateral relatives (brothers and sisters) of intestate take equally, those that are dead being represented by their descendants. 5. If no heir under the aforegoing, and estate is derived through the father, it descends to the brothers and sisters of the father, and the descendants of those dead, equally; if the estate is derived through the mother, then to her brothers and sisters, and the descendants of those that are dead, equally. 6. If no brothers or sisters of the father or descendants of such (where estate is derived through him), it descends to the brothers and sisters of the mother and their descendants; similarly, where the estate is derived through the mother and there be none of her brothers and sisters or descendants of them, it descends to the brothers and sisters of the father and their descendants. 7. If estate is derived through neither father nor mother, it goes to the brothers and sisters of them both, and the descendants of such as are dead, equally. 8. Relatives of the half blood take equally with those of the whole blood in the same degree, and their descendants inherit in the same manner as the descendants of those of the whole blood; but where the intestate obtained the inheritance by descent, devise, or gift from an ancestor, all those who are not of the blood of such ancestor are excluded. Descendants in all cases share per stirpes (or by representation), however remote the degree of consanguinity. 9. Where deceased leaves a husband or wife and no children, one-half the real and personal property vests in such husband or wife absolutely.

Distress for Rent. (*See Rent.*)

Distribution of Personal Estate. The surplusage of the personal estate of a person dying intestate is distributed as follows: 1. One-third to the wife, and residue in equal shares to the children and the legal representatives of such as are dead; where any child has been advanced by the intestate during his life time, he only takes such share as shall make the portion of all equal. 2. If no children nor representatives of dead children, then one-half to the wife and the residue to the next of kin of the intestate, and their representatives, equally. 3. If no wife, the whole is distributed equally among the children and their representatives; of neither wife nor children, then among the next of kin of the intestate and their representatives. 4. Where intestate leaves no wife nor children, but a mother and brothers or sisters, such brothers and sisters (and the representatives of such of them as are dead) share equally with the mother. Where decease leaves wife or husband and no children, one-half the real and personal estate vests in such wife or husband absolutely. One year must elapse after the death before the personalty may be distributed among the relatives of deceased. (*See Administration.*)

Divorce. The supreme court has jurisdiction to grant a judicial separation (divorce *a mensa et thoro*) on the application of either husband or wife, on the ground of adultery, or cruelty, or desertion, without cause, for two years or upward. It may also decree a dissolution of the marriage—on the application of the husband, on the ground of adultery; on the application of the wife, on the ground of incestuous adultery, bigamy with adultery, rape, sodomy, or bestiality, adultery coupled with such cruelty, as without adultery would have entitled her to a judicial separation; or adultery, coupled with desertion, without reasonable excuse, for two years or upward. Payment of alimony to the wife may be ordered by the decree dissolving the marriage or granting a separation, or it may be sued for separately, where the wife has either obtained or is entitled to such a decree. Where a marriage has been dissolved either party may marry again. A wife justifiably living apart from or deserted by her husband may obtain an order protecting her earnings and those of her infant children from his debts, obligations, or control.

Dower and Tenancy By the Curtesy. The widow of a deceased person is entitled to dower out of any land which he shall not have absolutely disposed of in his lifetime, or by will. Unless a contrary intention appears by the will a devise to the wife of any land which would ordinarily be subject to dower bars her right to dower out of all lands of the deceased. Dower is subject to any conditions or restrictions declared by the will. A bequest of personal estate does not bar dower unless a contrary intention is declared, and a legacy bequeathed to the wife in lieu of dower takes priority over other legacies. Partial estates and interests in the land, and charges created by the husband, and debts, incumbrances, etc., to which the land is subject, take precedence over the right to dower. Land may be absolutely disposed of and the wife's right to dower barred by the husband, by deed, without the wife joining in the execution. Not more than six years arrears of dower may be recovered.

Tenancy by the curtesy in lands belonging to the wife may be barred by her, as dower may be by the husband, but unless so barred the right will attach.

Employers' Liability. By statute, employers are liable to their workmen for personal injuries or death caused: 1. By defects in the condition, construction, or arrangement of ways, works, machinery, plant, buildings, stages, scaffolds, premises, etc., of the employer, where such defect arises or continues by reason of the negligence of the employer or his responsible agent. 2. By the negligence of any person entrusted by the employer with superintendence, while such person is exercising such superintendence. 3. By the negligence of any person in the service of the employer, to whose orders the claimant was bound to conform and did conform, where the injury has resulted from such conformance. 4. By the act or omission of any person engaged by the employer, made or done in obedience to the rules or instructions of the employer, where the injury has resulted from some impropriety or defect in such rules or instructions. 5. By the negligence of any person in the service of the employer who has charge of any signal, points, locomotive, engine, machinery, or train upon a railway, tramway, or street railway. In no case can the workman recover where he has been aware of the defect and has inexcusably failed to notify the employer, or some person superior to himself in the employer's service, unless he is aware that the employer or superior knows of the defect. Notice of the injury must be given within twelve weeks, and an action commenced within six months after the injury occurs. Damages are limited to $2,000, or three years' wages, whichever is the larger. Workmen can not contract to waive the benefit of the statute unless there is

some other consideration than the employment, and the court is of opinion that such consideration is ample and adequate, and the contract reasonable, and not improvident on the part of the workman. The statute does not effect the common law principles relating to employers' liability, but is in addition thereto.

Evidence. A person is not incompetent to give evidence by reason only of interest or crime. Persons charged with any offense or crime, and their husbands or wives are competent, but not compellable witnesses, and parties to civil causes and their wives are both competent and compellable witnesses at the trial. The evidence of a plaintiff in an action for breach of promise of marriage must be corroborated, as must also that of a child of tender years. An affirmation or declaration may be substituted for an oath, where the witness alleges conscientious scruples against taking an oath. An admission or representation by a partner concerning partnership affairs is evidence against the firm. (*See also Commissions, Powers of Attorney.*)

Execution. In the supreme court where judgment is for non-payment of a sum of money or costs, or for the recovery of land, execution against goods, or for delivery of possession of the land, as the case may be, may issue forthwith. On judgments of a different nature than above specified, and on judgments (other than default judgments) in the county court, unless otherwise ordered, fourteen days must elapse before execution. Execution may issue out of the supreme or county court without leave at any time within six years after judgment, and after that period by special leave. There is no execution against lands, but where a judgment has been recovered exceeding $100, the judgment may be registered against lands of the defendant, and a judge may order the same sold by the sheriff to satisfy the judgment. Goods taken in execution may be sold five days after the seizure. Executions are in force for one year, after which they must be renewed for another year, if against goods, and so from time to time; judgments registered against lands affect the lands from time of the registration of the judgment, and bind the same for two years, after which they may be renewed for a further period of two years, and so from time to time. (*See Judgment.*) An execution binds goods from the time of actual seizure thereunder. Lands sold under judgment may be bid in by the plaintiff, or by a mortgagee. In case of the sale of goods or lands under execution, a judge may order three months' arrears of wages to be paid out of the proceeds, to the employees or workmen of the judgment debtor (if so much be due). Where judgment is in the supreme court, and rent is due by the judgment debtor for the premises on which goods taken in execution lie, the judgment creditor must, before removing the goods so seized, pay the rent due, up to one year's arrears. Under similar circumstances in the county court, an additional levy is made under the execution sufficient to satisfy four weeks' rent where the tenancy is weekly, the rent of two terms of payment where for any other term less than a year, and one year's rent in other cases. Small debts courts may not issue execution against lands, but where the judgment exceeds $60 it may be removed to the county court and registered against lands, which may then be sold by judge's order in the usual way. (*See Courts.*) A judgment debtor may be examined on oath after judgment in any court, as to what property he has which is liable to be taken in execution. (*See Courts; also Exemptions, Garnishee.*)

Executors and Administrators. (*See Administration, Distribution, Probate, Succession Duties.*)

Exemptions. The goods and chattels of any debtor, at his option, to the value of $500, are exempt from forced seizure or sale by any process of law or equity (save distress for rent or taxes). This does not extend to goods taken in satisfaction of a debt contracted for or in respect of such identical goods. Lands, duly registered as a homestead, are exempt to the value of $2,500. (*See Homesteads, Garnishee.*)

Factors. (*See Agents.*)

Frauds, Statute of. Leases, or estates in land, not in writing and signed by the party creating the same, have the force of estates at will only, except leases not exceeding three years. The following must also be in writing: Promise by an executor or administrator to answer damages out of his own estate; promise to answer for the debt, default or miscarriage of another person; agreement made upon consideration of marriage or upon any contract or sale of lands or of any interest therein; agreement which is not to be performed within one year; declaration or assignment of trust; acknowledgment of debt, to bar the operation of the statute of limitations (except where such acknowledgment takes the form of a payment on account of principal or interest); ratification or promise made after full age to pay a debt contracted during infancy; representation or assurance concerning the character, credit, ability, etc. of another person, in order that such person may obtain credit. The consideration for a guarantee need not appear in the writing; a guarantee given to or for a *firm* ceases upon a change in the persons composing the firm, unless a contrary intention appear, expressly or by implication. No contract for the sale of goods valued at $50 or upwards is binding, unless the buyer accept and actually receive part of the goods sold or give something in earnest to bind the bargain or in part payment, or sign a memorandum of the sale. (This includes goods not *in esse* at the time of the contract.) An acknowledgment given by one of two or more joint debtors, does not bind the other or others, so as to bar the statute of limitations, as against him or them.

Garnishee. In all courts of the Province, debts owing to the judgment debtor may be attached by the judgment creditor, upon an *ex parte* application supported by affidavit showing that judgment has been recovered and is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction of the court. In the supreme court and small debts courts this can only be done after judgment recovered; in the county court, where the plaintiff's claim is a debt or liquidated demand, debts due to defendant may be attached before judgment, as well as after. In small debts courts, wages due defendant are exempt from garnishee up to $30, where defendant is married or the mainstay of others, and $20 in other cases, except where the plaintiff's claim is for board or lodging. In the county court a similar exemption may be allowed by the judge, not exceeding $10.

Grace, Days of. (*See Bills of Exchange.*)

Guarantee of Debts of Third Persons. (*See Statute of Frauds.*)

Hire Receipts (*See Conditional Sales.*)

Holidays, Bank. (*See Bills of Exchange.*)

Homesteads. Lands may be registered as a homestead, up to the value of $2,500, upon the owner filing in the registry office a notice thereof and a declaration disclosing assets equal to that amount, or to the value of the homestead, where it is worth less than $2,500. Where so registered, a homestead is exempt from seizure or sale under execution (except for taxes), for liability incurred after such registration; or, where its value exceeds $2,500, it is exempt to that amount. The exemption is forfeited by any fraud in the registration thereof. Where the owner of a registered homestead dies intestate, leaving a wife and infant children, it passes wholly to the wife during her widowhood or the minority of the children, and can not, during that period, be sold for the debts of the deceased incurred subsequent to the registration. (*See Exemptions.*)

Husband and Wife. (*See Divorce, Dower, Married Women.*)

Infants. Infancy continues till the completion of the twenty-first year, both in males and females. Infants may sue by their next friend, and defend by their guardian. In the county court, they may sue for money due them for wages or piece work, up to $500, in the same manner as if of full age. Ratification after full age of a promise made or debt incurred during infancy, must be in writing. (*See Statute of Frauds.*) Infants are liable for necessaries supplied to them. Infants, with the sanction of a judge of the supreme court, may make valid marriage settlements, as if of full age; provided that they shall be, in such case, of not less age than twenty years, if males, and seventeen, if females.

Insolvency. There is, at present, no general insolvency or bankruptcy law in force in the Provinces of Canada. (*See Assignments.*)

Insurance, Life. A policy holder may, by will or by a declaration on, or attached to, the policy, appropriate his life insurance to the benefit of his wife and children or any of them, or apportion the same among them. In such case, on maturity of the policy, the amount is payable to the persons so named, free from claims of the creditors of the insured. If the insurance has been effected and premiums paid with intent to defraud creditors, they are entitled to receive thereout an amount equal to the premiums paid, without interest. These provisions extend *mutatis mutandis* to insurance similarly effected by a wife, for the benefit of her husband or children.

Interest. The legal rate of interest is 6 per cent, where no other rate is stipulated, but any rate may be agreed upon between the parties, there being no usury law at present in force in Canada; banks, however, can not lawfully recover more than 7 per cent on loans. Unpaid bills of exchange and promissory notes bear interest at 6 per cent from maturity, whether so expressed or not. Interest may not be compounded, except by special agreement. Where interest is, by any written instrument except a mortgage, made payable at a rate or percentage per day, week, month, or any period less than a year, the contract must expressly state the yearly rate or percentage to which such other rate or percentage is equivalent, otherwise interest is not recoverable at a rate of more than 6 per cent per annum.

Joint Debtors. The plaintiff may join as parties to the same action any one or more or all of the persons severally or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes. The action is not defeated by non joinder or misjoinder of parties or causes of action, but the defect may be remedied by amendment. (*See Parties to Actions.*)

Judgments of the supreme and county courts bind lands and interests therein of every description for two years from the time of registry thereof in the land registry office of the district wherein the lands lie, and affect lands acquired by the judgment debtor after, as well as before, registration of the judgment. Judgments must be registered before lands can be sold thereunder. (*See Execution.*) Registration may be renewed from time to time for a further period of two years. *Foreign Judgments:* Judgments recovered in any court outside of British Columbia are foreign judgments, and this includes judgments of courts of the other Provinces of Canada. A final judgment of a foreign court having jurisdiction over the parties and subject matter of the suit is conclusive between the parties, on the merits; and in an action brought in British Columbia upon such a judgment no defence can be given which might have been given in the original action, if the defendant was served with or had notice of the process in such original action, and an opportunity to answer it. Suit can be brought in British Columbia upon a foreign judgment within the time limited for actions upon judgments by the laws of such country.

Landlord and Tenant. (*See Rent.*)

Land Registry. Registry offices are established for registration of bills of sale, powers of attorney, assignments, etc., judgments, deeds, mortgages and all instruments affecting lands in the various districts of the Province. On the registry of any document affecting lands a certificate of title is issued by the registrar to the person entitled thereto. Instruments are not ordinarily copied or recorded at full length, but their effect is briefly entered by the registrar in the proper index, and the instrument returned to the person applying for registration. Title deeds to property in this Province should be carefully preserved, as it is the duty of the registrar to require production of the documents establishing a complete chain of title, upon application to him for registry. Documents requiring registration must be first proved or acknowledged. (*See Acknowledgments; see also Deeds and Mortgages, Judgments.*)

Leases must be in writing, and signed by the lessor, except leases for terms not exceeding three years. They need not be under seal, except in the case of incorporated companies, but it is advisable to so have them. Leases for three years or more should be registered, and must be first proved or acknowledged. (*See Acknowledgments, Land Registry.*) A short form of lease, as well as of deeds and mortgages, is provided by statute, the use of which is not obligatory, though advisable where applicable.

Licenses must be taken out for nearly every trade or occupation, whether the licensee is domiciled in the Province or not. Within municipalities, application should be made to the city or municipal clerk, elsewhere to the Government agent of the district. Municipalities may exact a license fee from commercial travelers for firms or houses selling goods at retail and not having a permanent place of business in the Municipality.

Liens, Mechanics'. Unless otherwise agreed in writing, every contractor, sub-contractor, and laborer doing or causing work to be done upon any building, wharf, bridge, mine, or other work, has a lien thereon and on machinery and fixtures therein, and on the materials furnished therefor and the lands and premises occupied thereby, for the price of such work. The lien must be registered within thirty-one days after the work is completed, or the claimant has ceased to work thereon, and an action in the county court to enforce the same must be begun and a *lis pendens* filed, within thirty days after registration of the lien. Where the work to be done is to exceed $500, the owner and contractor (if any) must first file a statement containing particulars of the proposed work, cost, names of owner and contractor, and interest of owner in the land. Where the contract price of the work exceeds $500, contractors or sub-contractors are not entitled to receive any payment until they have delivered to the owner a pay-roll, receipted in full by each laborer, and posted a copy thereof upon the premises; if the owner makes payment without requiring this to be done, the liens of unpaid laborers attach to the property, notwithstanding. The proceeds of a sale to realize liens are distributed as follows: 1. Costs of the proceedings. 2. Six weeks' wages, if due, to all laborers employed on the work; or if the proceeds are insufficient therefor, then pro rata among them. 3. After payment of laborers in full sub-contractors' claims are paid, or balance divided among them, pro rata. 4. Payment of any balance due to the contractor, and if anything remain it is paid to the owner. Mechanics have a lien on any chattel, for money, skill or materials bestowed thereon, and, if unpaid for three months, may sell such chattel in satisfaction, after two weeks' advertisement in a newspaper.

Liens of Woodmen. Any person performing labor or services in connection with any logs or timber in the Province, has a lien thereon

for the amount due him, taking precedence over all charges except Government tolls thereon. The lien must be filed within thirty days after the last day of such labor or services, and proceedings to enforce the same taken in the supreme or county court (according to their respective jurisdictions) within thirty days after filing the lien. Such proceedings may be by ordinary action alone, or a writ of attachment may be issued and the logs seized and held thereunder, pending judgment, unless security is given or the amount claimed is paid into court. In either case, after judgment, the logs may be sold to satisfy the judgment. Several lienholders may be joined in one action, and the proceeds of sale distributed among them to the amount of their respective liens.

Limitations of Actions. Actions upon simple contracts notes, bills, accounts, libel, trespass to lands, detinue, replevin, and for seamen's wages, must be brought within six years; for assault, battery, wounding, or false imprisonment, within four years; and for slander and penalties fixed by statute, within two years from the time the cause of action respectively arose. Actions upon judgments, bonds, mortgages, or instruments under seal, or to recover lands must be brought within twenty years. Where the plaintiff is under any disability, such as infancy, coverture or lunacy, or the defendant is beyond seas, the limitation does not begin to run until the removal of the disability. Acknowledgments to bar the statute of limitations must be in writing. (*See Frauds, Statute of.*) Part payment of principal or interest has the effect of such acknowledgment, but payment by one joint contractor or co-debtor will not prevent the statute running in favor of the other or others. Arrears of dower, rent, or interest charged on land can not be recovered for more than six years. *Foreign Limitations:* An action can not be maintained in British Columbia, on a cause of action arising beyond the Province, where it is barred by any statute of limitations of the country in which it arose.

Married Women, Acknowledgments by. (*See Acknowledgments.*)

Married Women, Property and Status of. A married woman may acquire, hold, and dispose, by will or otherwise, of any property, real or personal, as her separate property, in the same manner as if she were a *femme sole*, independently of her husband, and without the intervention of a trustee. She may contract in respect to her separate property, and sue and be sued without joining her husband, either in contract, tort, or otherwise; any damages or costs recovered by her are her separate property, and if recovered against her are payable out of her separate property. Husband and wife may sue each other, except in tort, and give evidence against each other. All property belonging to a woman at her marriage, or acquired by her thereafter, including her earnings from any employment or occupation, is held by her as her separate property, free from the control of her husband. After her marriage she continues liable for contracts entered into or wrongs committed before marriage, and may be sued therefor; and her husband is liable therfor, and for wrongs committed by her after marriage only to the extent of any property (if any) acquired by him through her. A married woman may act as executrix or trustee, free from her husband, either alone or jointly with any other person, and may insure her own or her husband's life for her own benefit. A husband may convey property directly to his wife, and she may convey her property without his consent or concurrence. The separate personal property of a wife dying intestate is distributed between her husband and her children in the same proportion as the personal property of a husband dying intestate is distributed between his wife and children. (*See Distribution; also Divorce, Dower.*)

Mechanics' Liens. (*See Liens.*)

Mining Laws. *Mineral Quartz Mines.* Every person or corporation, before engaging in prospecting or mining for any minerals or ore, other than coal, must take out a free miner's certificate, and the same must be constantly kept in force thereafter or all rights (short of a Crown grant) will be forfeited. Certificates may be taken out by individuals for one or more years, on payment of the fee therefor, but certificates of joint stock companies can only be taken out or renewed for one year at a time. All certificates expire May 31st in each year. Fees therefor: For individuals, $5 per year; for corporations with capital not exceeding $100,000, $50; with capital exceeding $100,000, $100 per year with proportionate rates for portions of a year. Individuals, to obtain certificates, must be over eighteen years of age. Free miners may enter, prospect, and mine upon waste lands of the Crown, and upon private lands (except in municipalities) not occupied by any building, or falling within the curtilage of a dwelling-house, or used as an orchard, or actually under cultivation, or lawfully occupied for mining purposes (other than placer mining), or for an Indian, or military, or naval reservation. The foundation of the right of a free miner to so enter and mine is the fact that the right to the minerals does not ordinarily pass by the grant, but is reserved to the Crown and its licenses; and such right to minerals found in lands of other persons exists only where they have been so reserved. A full size mineral quartz claim is 1 500 x 1,500 feet, but fractional claims may be located. In locating a claim the requirements of the act as to legal posts, notices, recording, etc., must be strictly complied with, and any omission may invalidate the location. A claim properly located and recorded is held for one year, and thence from year to year, on performance of the statutory assessment work or improvements of not less than $100 per year, and payment of the annual fee of $2.50 for certificate; or payment to the Crown of $100 may be substituted for the assessment work in any year. Not more than one claim may be located by or for the same person on one lode or vein, but others may be acquired by purchase. A claim after location and record may be purchased from the Crown for $500, by the locator or his assigns, when a grant will issue, without the necessity of performing assessment work; or, after improvements to the value of $500 have been made thereon the holder is entitled to a "certificate of improvements," upon complying with the statutory requirements as to declaration, notices, survey, etc., three months after which, if no adverse proceedings are taken, he may obtain a Crown grant, or absolute title to the claim. All transfers of mining property or interests must be in writing and duly recorded. *Mining Partnerships* may locate a claim for each partner, and each partner must hold a free miner's certificate. The partnership name and name of each partner must appear on the location and record. A majority in interest of the partners may control the work, etc., on the claims and appoint a foreman or manager, who represents and has power to bind the partners. When a partnership is recorded with "limited liability" it is liable only for indebtedness contracted by the manager or duly authorized agent. *Placer Mining* claims are 100 feet long, varying in breadth according to whether "creek," "bar," "bench," "dry," or "hill" claims. The statutory requirements as to location and record must be strictly observed. Claims may be recorded for one or more years on paying the fee of $2.50 per year, and leases may be obtained, for not more than ten years, but no Crown grant can be had in placer-mining grounds. All transfers must be in writing and recorded. Water rights, for flumes, etc., may be obtained by grant for not more than ten years. The provisions as to mining partnerships are practically the same as above stated respecting quartz mining. *Coal Mining.* A license may be obtained for one year (renewable for further terms of one year as long as prospecting is actually carried on) to prospect for coal or petroleum over a tract of land not exceeding 640 acres, after performance of the statutory requirements as to location posts, publication of notice, etc., a fee of $50 per year. If coal is discovered the licensee may obtain a lease for five years, at 10 cents per acre annually, after having the land properly surveyed. At the expiration of the term, if mining has been continuously carried on, a Crown grant of the lands may be obtained at $5 per acre. All coal raised, whether under lease or grant, is subject to a royalty to the Crown of 5 cents per ton, petroleum 1 cent per barrel Mines are subject to government inspection and regulation.

Minors. (*See Infants.*)

Mortgages. (*See Deeds and Mortgages, Acknowledgments, Land Registry.*)

Parties to Actions. All persons may be joined as plaintiffs, in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, and judgment given for such of them as may be found entitled to relief. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. Neither every plaintiff nor every defendant need be interested in the whole relief claimed, and the court may at any time add, substitute, or strike out parties. Where plaintiff is in doubt against what person he is entitled to relief, he may join two or more as defendants, in order to determine the liability as between them. No action fails by reason of misjoinder, but the defect may be remedied by amendment at any stage of the proceedings. Partners may sue and be sued in the firm name, and service on one partner is service on the firm; but where, to the plaintiff's knowledge, the partnership has been dissolved before the action, the writ of summons must be served on every person sought to be made liable. Infants may be parties, by their guardians or next friends, and lunatics by their committees or guardians. Trustees and executors may sue and defend without joining the persons interested in the estate; and where there are numerous persons having the same interest in the subject matter of an action, one may sue or defend on behalf of all. (*See Joint Debtors.*)

Partnerships are either general or limited, the latter consisting of one or more general partners associated with one or more special or silent partners, who contribute to the firm capital. General partners are each liable for all the partnership debts; special partners are not liable beyond the amount contributed by them to the capital, but are not allowed to transact business and sign for the partnership, or bind the same in any way, though they may examine the state and progress of the partnership concerns and advise as to the management. Special partners interfering further than this thereby become general partners, and are liable accordingly. In case of insolvency of a limited partnership, no special partner may claim as a creditor until all other creditors are paid in full. After the death of any partner, his estate is still liable for partnership debts incurred while he was a partner, but no further, and subject to the prior payment of his separate debts. An admission or representation by a partner concerning partnership affairs is evidence against the firm, and notice to one partner is notice to the firm. On a person being admitted a partner to an existing firm, he does not become liable for the firm's antecedent debts, nor is a retiring partner liable for partnership debts incurred after his retirement, though he still continues liable for such debts incurred while he was a partner. Partnership property can not be taken under execution against one or more members individually, but the interest of such member in the partnership property and profits may be charged, and applied under the direction of a receiver, in satisfaction of the judgment. No majority of partners can expel any partner, unless under an express agreement to that effect. Where no time of duration has been fixed, a partnership may be determined by notice by any partner at any time, and such notice must be in writing where the partnership has been constituted by deed. A partner may assign or encumber his interest in the partnership, but the assignee is not entitled to an account (except on dissolution), or inspection of the partnership concerns, nor to any part in the management, but only to the assignor's share of profits. A partnership is dissolved (subject to agreement) by effluxion of time, where entered into for a fixed term; by the termination of any specific undertaking for which alone it was entered into; by notice, where no time is fixed; by death or bankruptcy of any partner, or on his share being charged in execution for his separate debt; by the happening of any event making the partnership business unlawful; by the court, on application of any member, for fraud, improper conduct, lunacy, incapacity, breach of agreement, etc., on the part of any partner, or when the business can only be carried on at a loss, or for other good cause. Partners may sue and defend in the firm name, and service on any member is service on the firm; but where, to the knowledge of the plaintiff, the partnership has been dissolved before action, the writ of summons must be served on every person sought to be charged. Persons forming limited partnerships for trading, mining, or manufacturing business, within the Province, must register a certificate and publish notice thereof, and any renewal, change in members or objects, or dissolution must be similarly registered and published, otherwise the partnership is treated as a general one. General partnerships must also be registered and a certificate filed on their formation, dissolution, or any change in firm name or membership, or removal of any member from the Province, otherwise a penalty is recoverable against the parties.

Personal Property, Distribution of. (*See Distribution.*)

Powers of Attorney affecting lands should be filed with the registrar general at Victoria, the execution having first been proved or acknowledged in the same manner as a deed. (*See Acknowledgments.*) Every power of attorney, whether the principal is within the Province or not, continues in force, so as to protect third parties acting thereunder, until its revocation, or the death, bankruptcy, insolvency, or marriage (if by a female) of the principal shall have been filed. A confirmation by the principal of any instrument executed or act performed, purporting to have been executed or performed by such principal by his attorney, is conclusive evidence of the authority of such attorney, without production or proof of any power of attorney. A corporation may, by writing under its corporate seal, duly proved or acknowledged (*see Acknowledgments*), empower any person, either generally or specially, as its attorney to execute deeds on its behalf, within or without the Province, and deeds so executed by such attorney on behalf of the company, and under his seal, are binding on the company.

Practice of the Courts. (*See Actions, Courts.*)

Preferences. (*See Assignments.*)

Probate. (*See Administration, Courts, Deceased Persons Descent, Distribution, Succession Duties, Wills.*)

Promissory Notes. (*See Bills of Exchange, Protest.*)

Protest. Inland bills and notes (i. e., those both drawn and payable within the Dominon of Canada, or else drawn within Canada upon some person resident therein) need not be noted or protested, in order to hold the drawer (of a bill), or indorser, but notice of dishonor must be given; a foreign bill or note must be protested for non-acceptance or non-payment, otherwise the drawer (of a bill) and indorsers are discharged

from liability. Protest must be made or noted on the day of dishonor, but if noted on that day may be extended subsequently; but where the bill or note is presented through the post and returned by post dishonored, it may be protested at the place to which it is returned, not later than the day after its return (holidays excepted). A bill or note may not be protested for *non payment* before 3 P. M. Delay in noting or protesting is excused, when caused by circumstances beyond the control of the holder, and protest (as well as notice of dishonor) is dispensed with, where the person to be notified or made liable can not be reached by reasonable diligence; or where protest or notice is waived, expressly or impliedly (which may be before or after dishonor). A protest need not be under seal. Protest or notice is not necessary, in order to hold the acceptor of a bill or maker of a note, whether inland or foreign. Expenses of protest may be recovered by the holder. (*See Bills of Exchange, Joint Debtors.*)

Real Estate, Descent of. (*See Descent.*)

Registration of Titles. (*See Land Registry.*)

Rent may be recovered by action, or by distress on the goods and chattels of the tenant. Distress can not be made later than six months after determination of the lease, and must be during the continuance of the landlord's title or interest, and the possession of the tenant in arrears. Where goods are fraudulently removed, to prevent distress, they may be followed by the landlord, and distrained within thirty days, except where they have been bona fide sold to a third person, for valuable consideration. Goods of lodgers are exempt from distress; cattle, stock, and growing crops are among the goods which may be taken. Goods taken may be secured and sold on the premises, or elsewhere, but can not be sold before five days after distress and notice thereof to the tenant, nor until they have been appraised by two sworn appraisers. If the tenant dispute the legality of the seizure he may replevy the goods within the five days, and institute an action of replevin to determine the title. (*See Replevin.*) Tenants neglecting to quit possession after determination of their term are liable to forfeit double rent thereafter. In such case also, a judge of the county court, on application of the landlord, may order a writ of possession to issue, under which the tenant is ejected by the sheriff. Where rent is unpaid for seven days after it is due, or the tenant is guilty of a breach of any covenant or condition of his tenancy, and such default or breach, under the terms (express or implied) of the tenancy, gives the landlord a right of re-entry, should the tenant, on demand made in writing, refuse to pay the rent or quit possession, the landlord may apply to the county court for a writ of possession, which will issue unless sufficient cause is shown by the tenant against the same. Where such proceedings are taken only for non-payment of rent, the tenant is entitled to retain possession, on payment of the arrears, with costs of the proceedings. Not more than six years arrears of rent may be recovered against a tenant, by action or otherwise. A tenant may deduct from his rent taxes paid by him on the property of which he is tenant. (*See Taxes; also Executions, Leases.*)

Replevin. When goods, chattels, papers, or any other personal effects have been unlawfully distrained, taken or retained, the person complaining thereof may bring an action of replevin to determine the rights, and have the property restored to him under a writ of replevin, pending the result of the action. Before obtaining the writ, or a return of the property thereunder, he must furnish a bond to the sheriff, in double the value of the property, conditioned to prosecute the action with the effect and without delay, and to return the property, if so adjudged. The sheriff then replevies or seizes the property, and restores it to the complainant, pending the result of the action, which is carried on in the same manner as other actions. The sheriff may break open any building, etc., in which the goods have been concealed, in order to take them. County courts have jurisdiction in actions of replevin, where the property does not exceed $1,000 in value, and the title to land does not come in question, otherwise the action must be brought in the supreme court.

Solicitors, Costs, and Misconduct of. Misconduct, such as retaining money collected for clients, refusal to deliver a bill of costs, etc., should be reported to the secretary of the British Columbia Law society, Victoria, B. C., whose function it is to prosecute or otherwise deal with the offender. Solicitors may be suspended, fined, struck off the rolls, etc., for misconduct, and the law in this behalf is strictly enforced. If a solicitor delivers an untaxed bill of costs which is considered excessive, the client should, within one month after its delivery, apply to a judge for an order to have it taxed. After the lapse of a month, taxation will only be ordered on special circumstances shown, and on terms of the client paying the amount of the bill into court, pending taxation, or otherwise. Should one-sixth of the amount of the bill be struck off on taxation, the solicitor must pay the costs of the taxation and application therefor; if not so much is struck off, such costs are paid by the client. The decision of the registrar on taxation is subject to appeal to a judge. A solicitor may not sue for his bill until after one month from its delivery, in order to give the client an opportunity to have it taxed as above.

Succession Duties on Estates of Deceased Persons are not charged on estates of less net value (after payment of all debts) than $5,000, nor on estates of less value than $25,000, where the property passes to the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of the deceased. Save, as above mentioned, duty is charged as follows: Up to $100,000, 1½ per cent of net value; up to $200,000, 2½ per cent of total net value; for excess of $200,000, 5 per cent. Property passing under a will or intestacy, or by deed, grant, or gift made in contemplation of death, is subject to the duty. Where duty is payable executors and administrators are required to file, on oath, an itemized inventory of the estate and its value, and a statement of the persons to whom it will pass, and their relationship to deceased; they must also give a bond for a sum equal to 10 per cent of the sworn value of the estate, conditioned for the payment of the duty, when determined. The registrar of the county court fixes the amount of duty and his decision is subject to appeal. If the duties are not paid within two years after the death they are liable to bear interest thereafter at 6 per cent.

Taxes are levied by the Provincial Government, and also by the various cities, towns, and district municipalities, within their respective limits.

Provincial. An annual poll-tax of $3 is levied on male persons over eighteen years of age. All lands, improvements on lands, personal property and income in the Province (except land and improvements in municipalities, which are taxed by the municipality) are subject to provincial taxation, with the following principal exemptions: Property of the Dominion or Provincial Government, churches, cemeteries, schools, gaols, hospitals, literary societies, public roads, municipal property, industrial farms, lunatic asylums, scientific institutions, Imperial military and naval pay, salaries and pensions, incomes up to $1,000, personal property up to $300, salaries of clergymen, household effects of every kind, books and clothing, mineral timber or other lands, to the extent of any royalty paid to the Crown thereout. The rate of taxation is 4·5 of 1 per cent on real estate, ¾ of 1 per cent on personal property; on income up to $10,000, 1¼ per cent; up to $20,000, 1½ per cent; over $20,000, 1¾ per cent; if paid before June 30th a rebate is given of ¼ on real estate, ¼ on personal property, and 1·5 on income. Taxes for business licenses are also levied by the Province in unincorporated districts.

Municipal Taxes. Cities and other municipalities levy taxes only on land and improvements thereon, and by way of business licenses and road tax. Land is assessed at its actual cash value and improvements at 50 per cent of the value. Municipal taxes on land and improvements are subject to a rebate of 1·6, if paid before December 1st. Commercial travelers for firms not having a permanent place of business in the municipality and selling goods at retail are subject to a business license tax in municipalities, the amount of which is fixed by the respective municipalities, but may not exceed $50 for six months. Provincial and municipal taxes may be recovered, if unpaid, by action, or by seizure and sale of the property of the delinquent. Real estate sold for taxes may be redeemed within one year in municipalities, and two years elsewhere, on payment of the amount paid therefor by the purchaser at such sale, with interest. Taxes constitute a lien on property, prior to all other liens, save that of the Crown, (if any). Lands and improvements may be assessed against either the owner or occupant, but if the tax in such case is paid by the occupant, he may deduct the amount from his rent. Lands and goods seized for taxes are not entitled to the protection of the Homesteads and Exemptions Act.

Wages. (*See Assignments, Executions, Infants, Liens.*)

Warehouse Receipts. (*See Bills of Lading.*)

Wills must be in writing, and signed at the foot by the testator, or by some other person in his presence and by his direction; and such signature must be made and acknowledged by the testator in the presence of two or more witnesses, present at the same time, who shall attest and subscribe in the presence of the testator. No form of attestation is necessary. Any property or interest in property may be disposed of by will, and a will speaks from the time of the testator's death, not from its execution. Infants can not make a valid will. (*See Infants.*) Soldiers in actual service and seamen, while at sea, may make verbal or nuncupative wills of personal property only. A will is not invalid on account of the incompetency of an attesting witness. A gift to an attesting witness is void, but does not otherwise affect the will, or the competency of such witness to prove the execution. An executor may be a witness. A will is revoked: By marriage (except where made in exercise of a power of appointment; by a subsequent will or codicil, or some writing declaring an intention to revoke the same, and executed in the manner required for a will, or by the destruction of the will. Alterations made after the execution of a will are nugatory, unless executed the same as a will, or signed by the testator and witnesses in the margin or opposite or near to such alteration, or beneath a memorandum subscribed to the will referring to such alterations. A revoked will can only be revived by re-execution or by a duly executed codicil showing an intention to revive it. Unless a contrary intention appears, where a devise lapses by reason of the prior death of the devisee, or of such devise being contrary to law, it will form part of the residuary devise, if any. Where real estate is devised without any words of limitation, such devise will pass the fee simple or other the whole estate of the testator therein, unless a contrary intention appear. Gifts to children or other issue, who have died leaving issue at the testator's death, do not lapse, but descend to such issue. A will must be duly proved in a court having jurisdiction in probate, before it can be registered.

Woodman's Lien. (*See Liens.*)

SYNOPSIS OF THE LAWS OF MANITOBA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. TUPPER, PHIPPEN & TUPPER, Barristers, Winnipeg. (*See Card in Attorneys' List.*)

Acknowledgments. (*See Deeds.*)

Actions. In the county court a defendant served with a writ for a liquidated claim or debt must within ten days from service upon him file a dispute note, otherwise judgment by default may be signed against him and execution may be issued against his goods six days after judgment. In the queen's bench the defendant has sixteen days to file his defense if served within the Province and four weeks if served outside same, otherwise judgment may be signed and execution issued immediately, provided the plaintiff's claim is a liquidated one. If the defendant enters a defense to such a claim, the plaintiff may apply for leave to sign final judgment after filing an affidavit made by himself or any other person who can swear positively to the cause of action, and stating that in his belief there is no defense to the action. Every debt or chose-in-action arising out of a contract is assignable at law by any form of writing.

Administration of Estates. (*See Probate.*)

Affidavits. For use in provincial courts affidavits and declarations may be made in the province before any notary public or commissioner for taking affidavits for use in any of the courts before any judge, clerk of any county court, registrar, district registrar or his deputy. A statutory declaration may be made attesting the writing of any instrument or the truth of any fact or account if made in Canada, otherwise an affidavit must be used. Affidavits, declarations, etc., made out of Manitoba for use here may be made before: 1. Any commissioner for oaths appointed by the Lord Chancellor under Sec. 1 of "The Commissioners for Oaths Act, 1889," or any amendment thereto. 2. Any notary public certified under his official seal. 3. The mayor or chief magistrate of any city, borough, or town corporate in Great Britain or Ireland, or in any of Her Majesty's dominions within Canada, or in any foreign country certified under the corporate seal. 4 A judge of any court of superior jurisdiction in Her Majesty's dominions without Manitoba with the seal of the court affixed. 5. A consular agent of Her Majesty exercising his functions in any foreign place. 6. Any commissioner for taking affidavits for use in this Province.

Aliens. Real and personal property of every description may be taken, acquired, held, and disposed of as if a natural born British subject, and title to real and personal property may be derived from or in succession to an alien.

Arrest. No one can lawfully be arrested or held to bail for debt or non-payment of money.

Assignment and Insolvency. There is no bankrupt or insolvency law in force in this Province; but debtors may make assignments under "The Assignment Act" in trust for the benefit of all their creditors ratably and proportionately. Such assignments take precedence of all

judgments and of all executions not completely executed by payment, subject to the lien, if any, of execution creditors for their costs.

Attachments. All property, real and personal, of debtors, or persons against whom there is a cause of action, which is not exempt from seizure under execution or to answer a judgment upon such cause of action, may be attached in the following cases: 1. When such debtor or other person shall depart from Manitoba with intent to defraud his creditors or to avoid arrest or service of process or shall conceal himself therein with like intent. 2. When such debtor or other person, not being a resident of the province, shall be indebted or liable to a resident of the province upon contract or for damages. 3. When such debtor or other person, whether resident or non-resident, is about to remove any of his property out of the said Province, or has assigned or secreted any of his property therein, with intent to defeat, delay, or defraud creditors. 4. Where a non-resident of this province is indebted or liable to a resident of this Province in respect of a cause of action arising within this province. No bonds are required to be given by plaintiff. Remedy by garnishee process given by statute to creditors or persons having a cause of action against another, which may be had at the commencement of, or at any time during the pendency of, suit, a judgment requiring a person to do or abstain from doing anything except payment of money may be enforced by a writ of attachment or by committal.

Bills of Exchange. (*See Notes.*)

Bills of Lading and warehouse receipts are transferable by indorsement and delivery of the bill or receipt by the shipper or owner of the goods to the indorsee. By statute the consignee or indorsee is not only entitled to the property in the goods, but has vested in him all rights of suit and is subject to the same liabilities in respect of such goods as if the contract had been made with himself. Banks are permitted to take bills of lading, warehouse, and cove-keepers' receipts as security for advances made at the time, and power is given to sell the goods after notice upon default in payment. Stoppage in transitu is allowed.

Collaterals. There are no statutory provisions on this subject in Manitoba.

Contracts. All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. All contracts may be oral, except such as are required by statute to be in writing, namely: 1. Any agreement whereby to charge an executor or administrator upon a special promise to answer damages out of his own estate. 2. Any promise to answer for the debt, default, or miscarriage of another. 3. Any agreement made upon the consideration of marriage. 4. Any agreement for the sale of real estate or any interest in or concerning it. 5. Any agreement not to be performed within a year. This does not apply to leases for less than three years in pursuance of which the leased premises have been or shall be actually accepted by the lessee or any person claiming under him during any part of such term. No agreement for the sale of personal property of the value of $50 or upward shall be good unless the buyer shall receive part of the property sold or give something to bind the bargain or in part payment unless some memorandum in writing of such agreement is signed by the parties to be charged or their agent. Wagering contracts and claims for intoxicating liquors sold over a bar and consumed on the premises are void. All fraudulent conveyances of lands or personal property made with the intent to defeat, delay, or hinder creditors in the recovery of their claims are void as against such creditors.

Corporations are created by act of parliament or under the general acts relating to the incorporation of joint stock companies by letters patent, or under the "Manitoba Joint Stock Companies Act." Shareholders are limited in liability to the amount of their shares subscribed, and when paid in full they are discharged from any further liability. Insolvent companies are wound up and assets distributed under the provisions of the winding-up act, by the court of queen's bench. In the case of incorporated banks, shareholders are liable for double the amount of the stock. Foreign corporations are required to register and obtain licenses from the provincial government, when they shall have the same powers and privileges in Manitoba as if incorporated for the purposes mentioned in their acts or charters so far as they are within the jurisdiction and control of the legislature of Manitoba.

Courts. The court of queen's bench is the supreme court of Manitoba, and has an original and appellate jurisdiction both at law and in equity. There are four terms a year for the hearing of appeals from a single judge. County courts have jurisdiction up to $400 in contract and $250 in tort, except claims in the nature of seduction, breach of promise of marriage, and a few others which are confined exclusively to the queen's bench. An appeal lies from the county court to a single judge of the court of the queen's bench, when the amount in dispute is not less than $20 and not more than $50; and to the court of queen's bench en banc when the amount in question exceeds the sum of $50.

Deeds. Deeds of land, *or of any interest in land, in this Province* may be executed in the presence of a single witness. For the purpose of registration, an affidavit must be made by the witness of the due execution by the grantor, which affidavit, if made within the province, may be made before any commissioner for taking affidavits in the queen's bench, the registrar or deputy registrar of the county in which the lands lie, a judge of any of the superior or county courts, or any justice of the peace; if made in any other Province of the Dominion, it may be made before a judge or prothonotary of any of the superior courts of law or equity, or any notary public certified under his official seal; if made in any State of the Union, it may be made before the mayor of any city or corporate town and certified under the common seal of such city or town corporate, any consul or vice-consul of her majesty resident therein, or a judge of a court of record or a notary public, certified under his official seal. No acknowledgment is necessary if the due execution of the instrument is proven as above. It is not necessary for a wife to join in a conveyance by the husband of lands held in his own name, as dower does not attach during the lifetime of the husband. The Torrens system of land transfers has been introduced in the province, but registration under the act is optional with the owners. When once brought under the operation of the act, however, all subsequent transfers or conveyances must be in the manner laid down and according to the forms prescribed by the statute.

Depositions. The court or a judge may at any time order a commission to issue for the examination of witnesses (under oath) who are outside the jurisdiction of the court, by interrogatories or otherwise.

Distribution of Intestate's Property. If an intestate die leaving a widow and child, or children, one-third of his real and personal estate goes to his widow, and two-thirds to his child or children in equal shares and in case of decease of his children to such as lawfully represent them. There is no distinction and posthumous children share equally with children born during the lifetime of the intestate. If no issue the whole estate, real and personal, goes to the widow. If issue and no widow the whole to the issue. If no widow or issue to his father; if no widow, issue, or father to his mother, brothers, and sisters, in equal shares; if no widow issue, father, brothers, or sisters to his mother; if no widow, issue, father o mother to his brothers and sisters in equal shares; or if any of his brother *or sisters be dead* their children take the parent's share; all these failing t his next of kin but in no case are representatives admitted among collat erals after brothers' or sisters' children. The separate property of married woman dying intestate is to be distributed in the same manner a the property of a husband dying intestate. Real estate vests in the per sonal representatives since July 1, 1885, in the same manner as persona estate.

Divorce. Same as in Ontario.

Executions issue from the queen's bench in all cases as of cours against the goods of the judgment debtor at any time within six year from the date of recovery of judgment, and bind the goods from the dat of receipt by sheriff as against the debtor or purchaser with notice o from date of seizure as against purchaser for value without notice and must be renewed every two years. Lands are bound by the regis tration of a certificate of judgment in the registration division wher the lands are situated, which must be renewed every two years. Exe cutions from the county court remain in force for twelve months, an bind goods only, but may be renewed and may be exchanged for queen's bench execution after being returned as uncollectible by th county court bailiff. All executions in the hands of the sheriff at th date of seizure, or which are received by him within three months afte such seizure, share ratably in the distribution of the amount realized All shares and dividends of stockholders in any corporated bank o other company in Manitoba having transferable joint stock and th interest of a mortgagee in any property mortgaged to him may b attached, seized, and sold.

Exemptions. The following personal and real property are fre from seizure under any writ of execution issued by any court in the Province 1. Beds and bedding in the common use of the judgment debtor an his family, and also household furniture and effects not exceeding i value $500. 2. The necessary and ordinary clothing of debtor and hi family. 3. Twelve volumes of books, books of a professional man, on axe, one saw, one gun, six traps, and all nets and seines used by debtor 4. The necessary food, if in possession of the debtor at the time o seizure, for himself and family for eleven months. 5. Three horses, mules or oxen, six cows, ten sheep, ten pigs, fifty fowls, and feed for the sam during eleven months. The exemption as to horses over the age o four years shall apply only in case they are used by the judgment debto in earning his living. 6 The tools, agricultural implements, and neces saries used by debtor in practice of his trade, profession, or occupation t the value of $500. 7. The articles and furniture necessary to performanc of religious services. 8. The land upon which debtor and his famil actually reside, or which he cultivates or uses, provided the same doe not exceed 160 acres, if outside the limits of any city or town. 9. The horses, stables, barns, and fences on debtor's farm, subject as aforesaid 10. All necessary seeds or roots for the cultivation of eighty acres. 11 The actual residence of any person, other than a farmer, in any city o town, provided the same does not exceed in value $1,500; if it exceed th above value, before it can be sold, the said amount must be paid or se cured to the debtor. The above exemptions only apply to debts con tracted since May 2, 1885. All debts due or accruing due prior to tha date are governed by the exemption act in force at the time such debt were contracted, and which was not as liberal to the debtor as th present law. Any agreement by debtor to abandon or waive exemption i null and void. Partnership firm can claim only one exemption.

Garnishment. All debts, obligations, and liabilities due, owing, o accruing due to a debtor may be attached to answer the claim of hi creditor. Debts may be garnished both before and after judgment. In th court of queen's bench a garnishing order can not be obtained until a action has been commenced; in the county court the garnishee proceeding and the action may be commenced together. Any debts due to a mechanic laborer, servant, clerk, or employee for wages or salary shall be exempt a the rate of $25 a month. Garnishee must reside within this Province.

Interest. The legal rate is 6 per cent. Parties may contract fo any rate, except banks, which are prohibited from charging more than per cent. Interest is computed on judgments from date of entry at per cent per annum. Rests not allowed unless there is a contract i writing. Accounts bear interest at legal rate from date of rendering o demand for payment; liquidated demands from date due.

Judgments remain in force ten years. Suit can be brought upon for eign judgment, but defendants can set up any defense which could hav been set up in the foreign court to the original cause of action, eve though he was personally served with process of the foreign court an appeared and pleaded thereto. (*See Executions.*)

Liens. Parties erecting or repairing building or furnishing materia for building have a lien on such land and building to the value of thei work, provided and after a statement of claim, verified by affidavit, i *filed in local registry office* within thirty days of completion or of furnish ing of material. Proceedings must be taken to enforce lien within ninet days from filing, otherwise lien lapses.

Limitation of Suits on contract, not under seal, written or parol within six years after cause of action accrued. Upon specialties, withi ten years after cause of action accrued. If party entitled to sue i under disability or beyond seas, then within six or twenty years from dat of removal of disability, as the case may be. Recovery of real estate ten years. Case taken out of statute, by part payment, or acknowledg ment in writing.

Married Women since 14th day of May, 1875, retain all propert owned by them at date of marriage, or subsequently acquired for thei own separate use, free from the debts or control of husband, but suc property is liable for their own separate debts and contracts, and may b sold to satisfy same. In every respect, wife is considered separate fro her husband; she may carry on business in her own name, and des with her property, and sue and be sued in the same manner as if sh were unmarried. Her property is not liable for any of the ordinary o necessary expenses of the family, unless specially charged by her. widow is entitled to dower in the real estate of her husband which he die possessed of, and which he has not disposed of in his lifetime or by hi will. In such cases the share of the wife is declared by statute to b one-third absolutely. A man may convey land to his wife, and vic versa, without the intervention of a trustee.

Mortgages are executed in the same manner as deeds and ar governed by same laws as to registration in the local registry office and as to priorities. Tacking prohibited by statute. Foreclosure or sal proceedings taken in the queen's bench; there is no redemption aft final order for foreclosure or sale. Chattel mortgages and bills of sa must be filed with the clerk of the county court, within whose county th goods are situate, before they have any effect as against executio creditors, or purchasers for value without notice or subsequent chatt mortgages. They require to be renewed within thirty days of the exp ration of two years from the date of filing, by filing a statement verifie

by the affidavit of the mortgagee or his agent, showing the amount due upon the mortgage and exhibiting his interest therein; unless renewed, they are absolutely void as against the creditors of the mortgagor.

Notes and Bills of Exchange. Bills of exchange, promissory notes, and checks are the ordinary forms of commercial paper used in this Province. It is not necessary that notes or bills of exchange be made payable at a bank or other particular place within the Province. Three days of grace are always allowed except when payable on demand. In case a bill or note falls due on a bank holiday (*i e.*, Sunday, New Year's Day, Christmas Day, Good Friday, Easter Monday, 24th May, 1st July, and Thanksgiving Day), it must be presented on the following day; when properly presented and protested, and notice given, the indorsers are liable; otherwise they are relieved. The production of the protest in any court within the province proves presentment and notice of dishonor without further evidence. No stamp duty is now required on commercial paper within the Dominion of Canada

Probate Law. The Province is divided into three judicial districts—the eastern, central, and western,—each of which has a surrogate court to which applications for probate or administration are made. Ancillary probate or administration may be had by producing the foreign probate or administration or exemplification thereof (a certified or notarial copy is not sufficient), purporting to be under the seal of the court by which the same has been granted, and the necessary affidavits. Ancillary probate or administration is limited to Canada, the United Kingdom, *or any* British Province. Executors are not required to give security, but an administrator must furnish, usually, two sureties, each in double the value of the estate. Where an applicant can not find sureties he may apply to have the official administrator appointed.

Suits. (*See Actions, Courts.*) There is only one superior court, the court of queen's bench, which has all the powers possessed by the various courts of law and equity at Westminster, together with the probate and divorce, admiralty and ecclesiastical courts of England, as they stood on the 15th day of July, 1870. All suits must be commenced by statement of claim entitled in and under the seal of the court from which issued, and such statement must be served on defendants within six months from date. Provision is made for substitutional service of process by publication or otherwise.

Taxes. Lands may be sold for taxes, when in arrears for two years or upward, by the treasurer of the municipality within which the lands lie, and may be redeemed at any time within two years from date of sale, upon payment of the sum paid by purchaser, with 10 per cent interest if redeemed within one year, or 20 per cent interest if redeemed within two years from date of sale. If not so redeemed purchaser may apply to the land titles office for absolute title, but owner has a farther six months from date of service of notice of such application upon him to redeem through the district registrar.

Wills. Every person over the age of 21 years, of sound mind, may dispose of his real and personal estate by will. Subsequent marriage operates as a revocation. A married woman may dispose of her separate estate by will without the consent of her husband, and may alter or revoke the same in like manner as if she were a femme sole. Her will must be executed in like manner as other wills. Every will other than an nuncupative will must be in writing, and every will other than an holograph will and a nuncupative will must be executed and attested as follows: 1. It must be subscribed at the end thereof by the testator or some person in his presence and by his direction must subscribe his name thereto. 2. The subscription must be made or acknowledged by the testator in the presence of two attesting witnesses present at the same time. 3. The said witnesses shall attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary. An holograph will wholly written and signed by the testator himself is valid in this Province. Such a will is subject to no particular form and requires no attesting witness or witnesses. Any soldier being in actual military service or any mariner or seaman, being at sea, may dispose of his personal estate by parol, according to the common law. Bequests to a witness or the wife or husband of a witness are absolutely null and void, although such person is competent to prove the will. No will made outside of this province is valid as a will in Manitoba unless executed in accordance with the laws of the Province.

SYNOPSIS OF THE LAWS OF NEW BRUNSWICK

RELATING TO

BANKING AND COMMERCIAL USAGES.

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Acknowledgments. Before the registry of any deed, conveyance, mortgage, certificate of discharge of mortgage, assurance, lease, or power of attorney, or other instrument affecting any interest in or title to land, the execution of the same shall either be acknowledged by the person executing the same or be proved by the oath of a subscribing witness. If such acknowledgment is to be taken or made out of the Province, it may be taken or made before: Any notary public certified under his hand and official seal; the mayor or chief magistrate of any city, borough, municipality or town corporate, certified under the common or corporate seal of such city, borough, municipality or town corporate, or the seal of such mayor or chief magistrate; any judge of the high court of Great Britain or Ireland; any judge or lord of session in Scotland; any judge of a court of supreme jurisdiction in any British colony or dependency; any British minister, ambassador, consul, vice-consul, acting consul, pro-consul or consular agent of her Majesty, exercising functions in any foreign place; the governor of any State; the handwriting and certificate of any such judge or lord of session being authenticated under the seal of a notary public, and the taking of any such acknowledgment before such minister, ambassador, consul, vice-consul, acting consul, pro-consul, consular agent or governor being certified respectively under his hand and seal of office. If the proof of the fied respectively under his hand and seal of office. If the proof of the execution of such instrument be taken out of the Province the same shall be taken before: Any commissioner for taking affidavits and administering oaths under chapter 36 of the consolidated statutes; any notary public, certified under his hand and official seal; the mayor or chief magistrate of any city, borough, municipality, or town corporate, chief magistrate of any city, borough, municipality or town corporate; any judge of the high court of justice of Great Britain or Ireland; any judge or lord of session in Scotland; any judge of a court of supreme jurisdiction in any British colony or dependency; the handwriting of any such judge or lord of session being authenticated under the seal of a notary public; any British minister, ambassador, consul, vice-consul, acting consul, pro-consul, or consular agent of her Majesty exercising his functions in any foreign place; the governor of the State; such proof being certified under the hand and seal of office of such minister, ambassador, consul, vice-consul, acting consul, pro-consul, consular agent, or governor.

Administration of Estates. In case of any deceased person being at the time of his death an inhabitant of any county in the Province or not being an inhabitant of the Province leaving assets in any county thereof, the judge of probates of such county may take probate or grant administration and shall in either case have exclusive jurisdiction over all the estate of such deceased person in the Province. Letters testamentary or of administration are granted on application to the judge by petition of the party entitled by law or one or more of the creditors of the deceased. Probate will not be granted (except it be made to appear that the estate is being wasted, or for other good reason) until after the lapse of fourteen days after the death of deceased. Caveats must declare the interest of the caveator and give his address, or the address of his attorney. Before administration is granted a bond is taken from the applicants with two sureties to the satisfaction of the judge. Unless further time is allowed by the judge it is necessary to file an inventory of the estate within three months, and an account of the administration must be rendered within eighteen months. Where the witnesses to a will reside out of the Province a commission may be had to take their testimony. If the personal estate is insufficient to pay the debts of the deceased the executor may within ten years from his appointment, or a creditor after one year and before expiration of the ten years, obtain a license or order from the judge for the sale of the real estate or any part thereof. Where an infant's estate does not exceed $5,000, the judge of probate may appoint a guardian for the person and estate of the infant. Claims against an estate for debts due by the deceased must be certified by affidavit. (*See Succession Duty.*)

Affidavits. Affidavits sworn out of the Province before any person appointed commissioner for taking affidavits in and for the courts in the Province of New Brunswick or before any of the several officials and persons authorized to take acknowledgments out of the Province (*see Acknowledgments*) are valid in all matters in which they would be valid if sworn before a competent official within the Province.

Aliens. Real and personal property of any description, except British ships, may be held and transmitted by aliens as by subjects. May be naturalized after residence of three years.

Arrest. In the supreme and county courts. Any person not having privilege may be arrested and held to bail or committed to prison on mesne process in any cause of action within the jurisdiction of the supreme or county courts. Where the cause of action is a debt certain an affidavit must first be made of the debt and that the arrest is not made for the purpose of vexing and harassing the debtor, or if for other than a debt certain a judge's order must be obtained on an affidavit setting out the cause of action. Where the affidavit is made without the Province it may be sworn before any person authorized to take affidavits for use in this Province in the country or place in which such affidavit is made. After judgment defendant making default may be committed to prison for a term not exceeding one year by order of the court or judge, if it be shown that defendant has the means or obtained credit under false pretenses, or has fraudulently disposed of his property, or is about to leave the Province. If a defendant arrested on mesne process at a hearing before a commissioner of which notice has previously been given to the plaintiff discloses the actual state of his affairs on oath and the commissioner is satisfied that the disclosure is a full one and that the defendant has not transferred any property intending to defraud the plaintiff, or since his arrest given any preference to any other creditor, the defendant may be discharged. In the city court of Saint John and in magistrates' courts arrest may be had in the first instance for debt where the amount is not less than $2 and does not exceed $80, and after judgment defendant may be again arrested on execution, but if he has no property and there has been no fraud or preference he may be discharged by commissioner on hearing after notice. In case judgment is under $400 and it is shown that debtor is in position to pay by installments the judge may, in his discretion, order payment by installments. Disobedience of the order renders debtor liable to attachment as for contempt of court. (*See Courts.*)

Assignments in Trust for Benefit of Creditors. An act of the legislative assembly, intended to prevent preferences by an insolvent, provides that all transfers and payments made by an insolvent with intent to give any creditor an unjust preference, or to prejudice any creditor, are void as against the creditors injured. In case an assignment be made, or suit brought within sixty days after the transfer or payment, the presumption is against the validity of such transfer or payment, whether the same be made voluntarily or under pressure. The above provisions, however, do not apply to bona fide sale or payments in ordinary course of trade or business, nor to a transfer in consideration of any present actual bona fide payment in money or by way of security for any advance of money, or which is made in consideration of any present sale and delivery of goods or other property, provided same is bona fide and for fair value. Assignments are made in the first instance to the sheriff, or to some resident of the debtor's county named by a majority of the creditors having claims of $100 and upward. A new assignee may be substituted on vote of like majority. All judgments and all executions not completely executed by payment are superseded by an assignment. Claims against estate must be proved within three months after notice to prove is given. Claimants must furnish particulars of the claim proved by affidavit and such vouchers as the nature of the case admits of, and the affidavit should also state that the claimant holds no security for the claim or any part thereof, and if negotiable paper is held, should state that it is not under discount. If security is held, or the paper is under discount, state all facts fully.

Chattel Mortgages and Bills of Sale. Every mortgage or conveyance of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change of possession of the property mortgaged is void as against subsequent purchasers or creditors, unless the same or a true copy thereof is filed with the registrar in the county in which the maker resides, or if non-resident of the Province in the county in which the things are, within thirty days from the execution thereof, with an affidavit of the subscribing witness of the due execution and an affidavit of the mortgagee or his agent that the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, and that it was executed in good faith and for the express purpose of securing payment and not for the purpose of protecting the property mentioned therein against the creditors of the mortgagor, or of preventing them from obtaining payment of any claims against him. Future advances may be secured where agreement therefor is recited in the mortgage. Every sale of goods and chattels not accompanied by an immediate delivery and followed by an actual and continued change of possession, must be in writing and accompanied by an affidavit of a subscribing witness thereto of the due execution and an affidavit of the bargainee or agent authorized in writing to take the conveyance, a copy of which authority shall be attached to the conveyance that the sale is bona fide and for good consideration, and not for the purpose of holding or enabling the bargainee to hold the goods against the creditors of the bargainor, and the conveyance must be registered as in the case of a chattel mortgage.

Conditional Sale of Chattels. Receipt notes, hire receipts, and orders for chattels given by bailee of chattels where the condition of the bailment is such that the possession passes without ownership being acquired until payment of the purchase money, shall only be valid against subsequent purchasers for value without notice in good faith in case of manufactured goods which, at the time possession is given to the bailee, have the name and address of the manufacturer, bailor, or vendor plainly attached thereto, and no such bailment shall be valid as against such subsequent purchaser, unless it is evidenced in writing signed by the bailee or his agent, and a copy of such writing is filed with the registrar of deeds of the county in which the bailee resides, within ten days from the execution of the receipt note or other instrument evidencing the bailment.

Corporations. Five or more persons may obtain letters patent for incorporation for ordinary business purposes by petition to the lieutenant governor on payment of a small fee regulated by amount of capital stock.

Courts. Magistrates courts and other like inferior courts, including city courts, have jurisdiction in actions for tort to real or personal property, and in actions of debt for small amounts, the highest jurisdiction in tort being $32 and in debt $80. The county court has jurisdiction to the amount of $200 for damages and $100 for debt. Supreme court has jurisdiction in all matters, as well as concurrent jurisdiction with other courts. Security for costs may be required in all courts where plaintiff resides out of the Province.

Days of Grace. Where a bill or note is not payable on demand three days of grace are allowed. If the last day is non-juridical the next day is allowed.

Descent and Distribution of Property. Real estate of an intestate is divided equally to and amongst his children or their representatives, or, if no children, then to the next of kindred and their representatives, including those of the half blood and their representatives; but children advanced by settlement or portions not equal to the other shares shall have so much of the surplusage as shall make the estate of all equal, reserving the widow's right of dower. The surplusage of the personal estate of the intestate shall be distributed by the judge of probate in manner following, that is to say, one-third of it to the widow, and the residue in equal portions to and amongst his children and such persons as legally represent them. Any child receiving any advancement of real estate in the life time of the intestate in excess of his share of the real estate shall have the value of such excess taken into account in the distribution of the personalty. If there be no children nor any legal representatives of them, one moiety of such surplusage shall be allowed to the widow, and the residue be distributed equally amongst the next of kindred of the intestate in equal degree, and those who legally represent them, but there shall be no representation among collaterals after the brothers' and sisters' children; and if there be no widow, all such surplusage shall be distributed equally amongst the children, and if no child, to the next of kindred, in equal degree, of the intestate and their representatives; and if after the death of the father any of his children shall die intestate, without wife or children in the lifetime of the mother, every brother and sister and their representatives shall have equal share with her. (*See Married Women.*)

Divorce. All jurisdiction in matters of divorce is vested in a court of record called "The Court of Divorce and Matrimonial Causes." The causes of divorce from the bond of matrimony and of dissolving and annulling marriage are frigidity or impotence, adultery, and consanguinity within degrees prohibited. In case of divorce for adultery the issue of the marriage are not bastardized or affected with any disability by reason thereof, and dower and curtesy are not barred unless expressly so adjudged.

Dower. Besides common right of dower the widow is entitled in equity to dower out of any lands to which her husband was beneficially entitled at the time of his death, whether such interest be wholly equitable or partly legal and partly equitable, and where the husband had right of entry or action in any land in which his widow would have had dower had he recovered possession thereof, she shall be entitled to dower out of the same if such dower be sued within the period within which such right of action or entry may be enforced.

Executions. In the supreme and county courts execution may issue upon signing final judgment and bind property, real and personal, from the time it is delivered to the sheriff to be executed. In inferior courts may issue against goods and chattels or the body. Memorials of execution duly registered are good for five years when they may be reregistered with like effect. (*See Assignments in Trust.*)

Exemptions. Wearing apparel, bedding, kitchen utensils and tools of trade or calling to the value of $100, are exempt from levy and sale under execution.

Garnishee. A judgment creditor for an amount exceeding $80, exclusive of costs, may garnishee debts due and owing judgment debtor, except wages not exceeding $20.

Holidays. In all matters relating to bills of exchange, notes, etc., the following are the legal holidays: Sundays, New Year's, Good Friday, Easter Monday, Christmas Day, the Birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign, or if such birthday is Sunday then the following day, the first day of July (Dominion Day), and if that day is a Sunday then the second day of July, and any day appointed as a holiday for Canada by proclamation, and the day next following New Year's Day and Christmas Day when those days respectively fall on Sunday.

Judgments in the supreme and county courts bind lands of the debtor from the time execution is delivered to the sheriff to be executed. (*See Executions and Assignments in Trust.*)

Liens. Mechanics, machinists, builders, laborers, and all other persons doing work upon or furnishing materials to be used in the construction, alteration or repair of any building, or erection or erecting, furnishing or placing any machinery at any time in, upon or in connection with any building, erection or mine, have a lien for the price of the work, machinery or materials upon the building or mine and the lands occupied thereby to the extent of the interest of the employer or purchaser therein. The lien of wage earners is for wages not exceeding thirty days or a balance equal to wages for thirty days. A claim for lien specifying particularly the name and residence of claimant and employer or purchaser, the time at which the work was done, the nature of the work and materials, description of the property and period of credit, if any, verified by affidavit, may be registered. Claim for wages must be registered within thirty days after last day of labor and other claims may be registered before the commencement or during the progress of the work or within thirty days from completion thereof, or from supplying or placing machinery. Registered liens good for only ninety days, unless proceedings are taken to realize within that time, in which case lien may be continued.

Limitations. Actions on judgments of courts of record, recognizance bonds or other specialties, or for recovery of real property, must be brought within twenty years. In assault, battery, wounding, imprisonment, or words, within two years. All other personal actions within six years.

Married Women. The married woman's property act of 1895 provides that a married woman shall be capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property as her separate property in the same manner as if she were a feme sole, without the intervention of a trustee, and that she may contract and sue and be sued as a *femme sole*. The separate personal property of a married woman, dying intestate, goes to her husband to the exclusion of the next of kin if no children, but if she leave children, her surviving, by a former husband, the surviving husband is entitled to one-third and her children, including those by the surviving husband, are entitled to the remaining two-thirds. If there are children by the surviving husband only, the husband is entitled to one-half and the children to the other half.

Mortgages. Mortgages must be proved or acknowledged in the same manner as deeds. (*See Acknowledgments.*) And to be effectual against creditor and bona-fide purchasers must be recorded. Are foreclosed by bill in equity or under a power of sale, if any therein. May be discharged by a certificate of the satisfaction of the mortgagee, his representatives or assigns, acknowledged or proved and duly registered; or the mortgagee may acknowledge satisfaction on the margin of the registry book against the registry of the mortgage in the presence of the registrar.

Notes and Bills of Exchange governed by statute of the Dominion of Canada, embodying mercantile law and legal decisions in the form of statutes. Notice of dishonor mailed to place at which the note on its face purports to have been made is sufficient.

Protest. Protest is required in case of non-acceptance or non-payment of a foreign bill appearing on its face to be such. In case of inland bill subject to due notice of dishonor, it is not necessary to note or protest.

Replevy. Upon giving a bond to the sheriff in double the value of the goods or chattels unlawfully taken or detained, an action to replevy the same may be brought. Claimant may file a claim of property within forty-eight hours.

Succession Duties Act. A succession duty is levied by the Province upon certain estates of deceased persons. The Act does not apply to estates which do not exceed $5,000, or any property given for religious, charitable or educational purposes, or property going to father, mother, husband, wife, child, daughter-in-law or son-in-law, where the estate does not exceed $50,000. Save as above estate are subject to a duty as follows: (1) Estate above $50,000, passing as above, $1.25 on each $100 up to $50,000, and $2.50 on each $100 of excess. (2) Where estate above $200,000, five per cent. (3) Where estate exceeds $10,000, so much as passes to grandfather, grandmother or other lineal ancestor, except father or mother, or to any descendant of a brother or sister of the father or mother of the deceased, or any descendant of such brother or sister, 5 per cent. (4) Where the estate exceeds $5,000, so much as passes to any person in any other degree of collateral consanguinity than above mentioned, or to a stranger, 10 per cent. No duty is exacted where the value of property passing to any one person does not exceed $200. If the beneficiary resides out of the Province, the amount of duty is double the amounts above mentioned.

Transfer of Corporation Stock. Stock is deemed personal estate. No share is transferable until all calls due have been fully paid or where the holder is indebted to the company if the directors object. Shares of deceased member may be transferred by his representative. No transfer unless made under execution or decree of court is valid until entry upon the transfer book of the company.

Wage Earners. (*See Liens.*)

Wills must be in writing, signed at the foot or end thereof by the testator or some other person in his presence by his direction, and such signature must be made or acknowledged in the presence of two witnesses present at the same time, who shall attest and subscribe in the presence of the testator and of each other. No form of attestation is necessary.

SYNOPSIS OF THE LAWS OF NOVA SCOTIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. BORDEN, RITCHIE & CHISHOLM, Barristers, Halifax. (*See Card in Attorneys' List.*)

Accounts. An account does not carry interest except by special contract in writing or custom of trade. A creditor may notify a debtor in writing that an account will bear interest after demand made, and in such cases payment of interest may be enforced.

Acknowledgments. (*See Deeds.*)

Actions. In the supreme and county courts actions are commenced by writ of summons. A defendant served in Nova Scotia must enter an appearance to the writ within ten days after service, inclusive of the day of such service. If service is effected out of the Province, the time for appearance is stated in the order granting leave for service out of the jurisdiction, and is limited, having regard to the locality of the place of service. Where the action is for debt or liquidated demand for money and the writ is specially indorsed, final judgment may be signed on default of appearance without further proof of claim; and execution may be issued against goods of defendant forthwith and against his lands after judgment has been recorded one year. If the defendant appears, the plaintiff delivers a statement of claim; the defendant delivers a statement of his defense within ten days, and the plaintiff delivers his reply. The action is then at issue and may be set down for trial. If the defendant appears to a writ specially indorsed, and has no defense to the action, the plaintiff may apply to a judge for final judgment, on notice to the defendant, such application being based upon an affidavit, proving the claim and averring that there is no defense. After judgment is obtained execution may issue. The jurisdiction of the supreme court is from $80 upward; of the county court, from $20 to $400. The county court has no jurisdiction in any action: 1. Where the title of land is brought in question. 2. In which the validity of any devise, bequest, or limitation is disputed, except in certain specified cases. 3. Criminal conversation or seduction. 4. Breach of promise of marriage. Plaintiff resident without the Province may be compelled to give security for costs, either by payment into court, or by bond of persons resident within the jurisdiction of the court and property qualified.

Administration of Estates. Letters of administration are granted by the probate courts of which there is one for each county of the Province. Administration shall be granted to some one or more of the persons hereinafter mentioned, and they shall respectively be entitled thereto in the following order: 1. The widow or next of kin, or both, as the judge of probate may think fit. 2. If the persons so entitled as above do not take out administration within ten days after the return day of the citation, the judge of probate may commit it to one or more of the principal creditors.

Affidavits. Affidavits may be sworn abroad for use in Nova Scotia, before any judge of a court of record, British consul, a vice-consul exercising his functions, notary public, certified under his hand and official seal, or a commissioner authorized to administer oaths out of the Province, duly appointed by the government of the Province.

Aliens may take, hold, convey, and transmit real estate, and trust companies or corporations having a legal status in any foreign state may hold real estate by way of mortgage or otherwise in furtherance of any trust they may assume in connection with any enterprise or undertaking within the Province of Nova Scotia, with full power to such companies or corporations to convey and transfer the same.

Appeals. An appeal lies from the county court to the supreme court sitting in banco. The cases wherein the sum or matter in dispute amount to $250 or upward an appeal lies to the supreme court of Canada. An appeal lies from a judge of the supreme court sitting in court or chambers to the supreme court in banco; from this latter court to the supreme court of Canada as above; and finally by special leave to the Privy Council in England. Security has to be given before leave to appeal will be granted.

Arbitration. The usual practice is for each party to appoint an arbitrator and these two appoint a third or umpire. Where they cannot agree on an umpire the court or a judge may appoint one upon the application of either party, provided he has given the other party seven clear days notice to appoint such umpire. Such arbitrators when appointed by order of court or otherwise have power to enforce attendance of witnesses by subpœna and punish for disobedience of subpœna. They may also administer oaths to the witnesses. Obedience to an award duly made may be enforced by a judge of the supreme court.

Arrest. Where plaintiff, by affidavit, proves to the satisfaction of a judge or commissioner that plaintiff has a good cause of action to an amount which brings action within the jurisdiction of county or supreme court as the case may be, and swears to his belief that he will lose the amount unless the defendant is arrested before he leaves the Province and that he believes defendant is about to leave the Province, the judge without inquiring into the ground of belief, will make an order directing that such defendant be arrested and held to bail. When the amount is less than $80 an order for arrest may be obtained from a magistrate, but in that case plaintiff's affidavit must show why he believes the defendant is about leaving the jurisdiction.

Assignments. (*See Insolvent Laws.*)

Attachment. In suits against absent or absconding debtor, the writ of summons shall be in the usual form, and shall describe the defendant as absent or absconding. The plaintiff may sue out a writ of attachment to take defendant's property or he may issue a summons to any agent having money or credits due defendant, on making an affidavit showing a cause of action for an amount within the jurisdiction of court, stating the amount of debt or damage sustained, and that defendant is about to leave the Province. The sum so shown should be indorsed on the writ of attachment. The sheriff shall levy for the amount indorsed on the writ with $120 for probable costs. Goods exhibited to sheriff as defendant's goods are appraised by sworn appraisers; defendant's goods are not bound by the attachment until levy is made. Perishable goods may be sold under an order of the court, unless defendant's agents give security for the value within three days after their appraisement; the affidavit may be sworn out of the Province if the court has jurisdiction over the subject matter of the claim.

Banks. The subject of banks and banking is one which, by the Canadian constitution, is committed to the Parliament of Canada. The legislature of the Province has no power to deal with the subject.

The legislation respecting banks and banking is contained in the act of the Parliament of Canada (53 Vict., C. 31) passed in the year 1890 and cited as the bank act. The provisions of the act apply to the thirty-six banks mentioned in schedule A to the act. The act continues the charters or acts of incorporation of said banks until July, 1901, subject, however, to forfeiture by reason of insolvency or non-performance of the conditions of the act.

The provisions for the incorporation of banks are largely similar to the provisions of law respecting the formation of other corporations. A bank can not commence business without previously obtaining permission from the treasury board to do so. The capital stock of a bank may be increased by resolution of the shareholders and approval of the treasury board. A full statement of the affairs of the bank showing the liabilities and assets must be laid before the shareholders at their annual meeting. A bank must hold not less than 40 per cent of its cash reserves in Dominion notes; if not it incurs a penalty of $500 for each violation. No bank can issue a note for less than $5, or for any sum which is not a multiple of $5. The payment of the notes is a first charge on a bank's assets. Existing banks must make a deposit with the minister of finance equal to 5 per cent of the note circulation. Notes of the bank are payable at par throughout the Dominion of Canada. Banks are authorized to hold real estate, to make advances in aid of building ships, and taking security therefor; and to take warehouse receipts as collateral security, and similar business. They are obliged to make returns to the finance minister showing their assets and liabilities, and giving the names of their shareholders in detail. Several penalties are provided for the enforcement of the various provisions of the act. The stock of a bank is transferable at its head office.

Bills of Exchange and Promissory Notes. The law is much the same as in the United States. A demand draft is without days of grace. A sight draft is entitled to three days of grace. Notice of dishonor is necessary to hold the indorser but not the maker. A bill or note falling due on a legal holiday (Sunday, Christmas Day, New Year's Day, Good Friday, birthday of sovereign or any day made a holiday by royal proclamation) is payable on the following day. The subject of bills of exchange and promissory notes is by the constitution within the powers of the federal parliament, and consequently, the law on the subject is the same in all the Canadian provinces.

Bills of Lading are now negotiable. Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel or train, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading has actual notice at the time of receiving the same that the goods had not in fact been laden on board, or unless such bill of lading has a stipulation to the contrary; but the master or other person so signing may exonerate himself in respect to such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or of some person under whom the holder claims. Every consignee of goods named in a bill of lading to whom the property in the goods therein mentioned passes upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all right of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made to himself.

Bills of Sale. Every bill of sale of personal chattels, and every schedule annexed or referred to in such bill of sale, must be filed, at the time of the execution thereof, with the registrar of deeds of the county or district in which the maker resides, accompanied by an affidavit by the grantor of the execution of the bill of sale and the bona fides thereof, unless such bill of sale is given to secure the grantee: (*a*) Repayment of any advances to be made by him under an agreement therefor; or (*b*) against loss or damage by reason of the endorsement of any bills or promissory notes; or (*c*) against loss or damage by reason of any other liability incurred by the grantee for the grantor; or (*d*) against loss or damage by reason of any liability to be incurred, under an agreement by the grantee for the grantor; otherwise as against the sheriff or other persons levying on or seizing such property comprised therein; under the process of law such bill of sale will only take effect and will only have priority from the time of such filing.

Chattel Mortgages. (*See Bills of Sale.*)

Collaterals. Bills of exchange, promissory notes, warehouse receipts, and bills of lading, etc., may be given as collateral security.

Corporations are formed by special charter, act of Parliament, or under joint stock companies acts. Foreigners can form a joint stock company for the purpose of carrying on business in Nova Scotia. Stockholders are liable for the full amount of the stock subscribed. This latter does not apply to banks, as stockholders under the bank act are liable to double the amount of the stock subscribed.

Court Jurisdiction. (*See Action.*)

Days of Grace. Where a bill is not payable on demand, the day on which it falls due is determined as follows: Three days, called days of grace, are, in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace. When the last day of grace falls on Sunday or legal holiday in the Province, then the next day following shall be the last day of grace.

Deeds. All deeds, judgments, and attachments affecting lands shall be registered in the office of the registrar of deeds appointed by the governor in council for the county or district in which the lands lie. Deeds within the Province may be proved upon the oath of a subscribing witness to the execution thereof taken before the registrar, a judge of the supreme court, a notary public, a justice of the peace, or upon the personal acknowledgment by the parties under oath of the due execution thereof. Deeds may be proved out of the Province, as well in foreign countries as in British dominions, by the oath of a subscribing witness or the acknowledgment by the parties under oath. Such oath to be administered by a commissioner appointed to take affidavits without the Province, by a judge of any court of record, by the mayor of any city, by a justice of the peace, or by a notary public, residing respectively at or near the place where the deed is proved, and such attestation with the date shall be certified in writing on the said deed by such public functionary; and in the case of such oath being taken before a justice of the peace, his certificate shall be authenticated under the hand and seal of a notary public; and where a deed is proved in a foreign country, the oath may be administered by and the attestation with the date certified under the hand and seal of any public minister, ambassador, or consul from the court of Great Britain, or vice consul residing at or near the place where the deed is proved. All deeds and mortgages shall be under seal and executed in the presence of at least one witness, and unless registered shall be void against any subsequent purchaser or mortgagee for valuable consideration, who shall first register his deed or mortgage of such lands.

Depositions. In an action, the court or a judge, upon sufficient cause shown by affidavit, may order a commission to issue for the taking of the deposition of witnesses residing outside the Province, in such manner as the court or a judge may direct. Parties to a cause may consent in writing to examine witnesses residing abroad.

Descent of Real and Personal Estate. *Real Estate.* When a person dies intestate, any real estate to which he may be entitled at the time of his death shall descend as follows: 1. In equal shares to children and issue of deceased children according to the right of representation. If no child living, to his other lineal descendants, who shall share equally if in same degree, otherwise according to the right of representation. 2. If no issue one-half to father, one-half to widow in lieu of dower; if no widow the whole to father. 3. If no issue or father, one-half to widow, other half in equal shares to mother, brothers, and sisters, and the children of deceased brother and sister, by right of representation; if no widow, whole to mother, brother and sister, and children of any deceased brother or sister, by right of representation. 4. If none of foregoing in equal shares to his next of kin of him in equal degree, excepting where two or more collateral kindred in equal degree, but claiming through different ancestors shall be preferred, but in no case shall representatives be admitted among collaterals of the brother's and sister's children. 5. If person deceased unmarried and under age, estate inherited from either parent goes to children of same parent and issue equally, if of same degree, otherwise according to right of representation; if no children of same parent, to all the issue of the other children of the same parent equally, if in same degree; otherwise according to right of representation. Degrees of the kindred computed by civil law, and kindred of half blood inherit equally with whole blood in same degree. Personal property descends in the same way, except that after the payment of debts, funeral expenses, etc., one-half of the residue goes to the widow, if any, provided that the intestate shall leave no lawful issue; and if the intestate shall leave no kindred, the whole of such residue shall go to his widow. The widow is allowed all her paraphernalia, wearing apparel, etc., sustenance for family for ninety days after death of husband.

Divorce. The judge in equity for the time being is the judge ordinary of the court for divorce and matrimonial causes. The jurisdiction of the court extends to all matters relating to prohibited marriages and divorce, and it may declare any marriage null and void for impotence, adultery, cruelty, or kindred within the degrees prohibited; provided, that no contract shall hereafter be deemed null and void by reason of pre-contract. The court may direct the examination of the witnesses orally, may declare, by definitive sentence or otherwise, the marriage between the parties to the suit to be null and void from such time as the court may deem proper, and costs and alimony in its discretion. Court may enforce judgment by execution. An appeal lies from this court to the supreme court *in banco*. After the suit has been finally determined either of the parties may marry again.

Dower. A wife is entitled to dower out of all lands (with a few exceptions, of which her husband was seized at and after their marriage) in which she did not bar dower during his lifetime; but a husband can only be tenant by the curtesy of such of his wife's land as she died seized of.

Execution. Writ of execution (*fieri facias*) may issue upon a judgment or order for the payment of any moneys or transfer of real or personal property, and, if unexecuted, shall remain in force for one year only from its issue, but may be renewed at any time before date of expiration from date of renewal, and so on from time to time. A writ issued against

personal property from the time of its delivery to the sheriff, a levy may be made under it at any time, and after levy and due advertising the property shall be sold. Execution against lands may issue at any time within six years from the signing of judgment. A judgment does not bind real estate of the debtor until it has been registered in the registry of deeds for the county of district in which said lands lie, for one year, and after such period the judgment creditor may order execution to be levied on said lands. The sheriff having made such levy, he shall give thirty days' notice of sale in the "Royal Gazette" newspaper, and by posters, when he shall sell the lands at public auction.

Exemptions. The necessary wearing apparel, bedding and bedstead of the debtor and his family, and the tools and implements of his trade and calling, one stove and his last cow, cooking utensils, six each of knives, forks, cups, plates, saucers, spoons, chairs, one shovel, one table, teapot, jug, spinning wheel, weaving loom, ten religious volumes, food and fuel for thirty days, two sheep and feed for same, one hog and feed for same, and cow, for thirty days, shall be exempted from execution.

Frauds. Leases or estates in land or mining areas not in writing have the force of estates at will, except as to leases under three years. Interest in land or mining areas shall be assignable only by deed or note signed by the party assigning the same. The declaration or creation of a trust in land or mining areas, or the assignment thereof, must be in writing signed by the party granting or assigning the same, or by his last will. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge any defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or whereby to charge any person on an agreement made upon consideration of marriage, or upon any contract or sale of lands or any interest therein, or in any mining areas, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing, signed by the party to be charged therewith, or some other person authorized by him. Promise to be answerable for the debt of another not invalid for want of statement of consideration. The ratification of a contract by an infant must be in writing to maintain an action. No contract for the sale of goods for the price of forty dollars or upwards shall be good unless the buyer accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum of the said bargain may be made and signed by the party to be charged therewith or their agents thereunto authorized.

Garnishment. The court or a judge, upon the ex parte application of any person who has obtained a judgment for the payment of money, upon affidavit of himself or solicitor stating that judgment has been recovered, and it is still unsatisfied and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing from such third person (the garnishee) to such debtor shall be attached to answer the judgment.

Holidays. Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday of the reigning sovereign, the 1st day of July (Dominion Day), and if that day is a Sunday, then the 2d day of July, and any day appointed by proclamation for a public holiday.

Husband and Wife. (*See Divorce and Married Women.*)

Insolvent Law. The Legislature of Nova Scotia, in 1898, passed an act respecting assignments of, and preferences by, insolvent persons, which act came in force on July 1, 1898. It provides that all confessions of judgment, gifts, conveyances, transfers, etc., given by persons in insolvent circumstances with intent to hinder or delay any of his creditors, or to give a preference to some of them over others shall be void. Any preference made within sixty days before action brought to impeach the transaction shall be presumed to be an unjust preference. The property and assets of any estate of which an assignment is made shall not be removed from the Province without the order of the court. In distributing an estate the employés of the insolvent are entitled to three months' wages in full and to rank with other creditors for the balance of wages if any. The remuneration of assignee is to be fixed by the creditors, and if more is voted by the creditors, then by a judge. Copies of assignment must be filed in registry of deed of county where insolvent resides, and notice of the assignment must be published in *Royal Gazette* and local newspaper.

Interest. Legal rate, 6 per cent. A contract may be made in writing for any rate not exceeding 7 per cent, when the security is real or chattel real, or for any rate where the security is personal property or personal responsibility.

Judgments. (*See Executions.*)

Limitations on all contracts not under seal, six years; judgments and contracts under seal, twenty years. No arrears of dower, rent, or interest can be recovered after six years.

Married Women's Property Act. Under this act married women may acquire, hold, and dispose of, by will or otherwise, any real or personal property as their separate property, in the same manner as if they were *femme sole*, and without the intervention of any trustee. Married women, by registered consent of husband, may carry on separate business. Married women having separate estate may sue and be sued as *femme sole*.

Mechanic's Lien. Every mechanic, machinist, laborer, builder, contractor, or other person doing work upon or furnishing materials to be used in the construction of any building, road, railway, wharf, pier, bridge, mine, well, excavation, sidewalk, pavement, drain, or sewer has a lien for the price of his work thereon to the extent of the owner's interest. A claim for lien must be filed in the Registry of Deeds for the registration district in which the lands lie, within thirty days after the completion of the work or the supplying of materials, else the lien will cease. Proceedings to enforce registered liens must be commenced within ninety days after the completion of the work, services, or furnishing of supplies, etc. Unregistered liens shall cease to exist on the expiration of time limited for registration, unless in the meantime an action is commenced to realize the claim.

Mortgages must be under seal. A mortgage is foreclosed by an action in the supreme court, and is discharged by a release in which reference is made to the registry of the mortgage, and same must be under seal, executed and recorded as an ordinary deed, and a marginal note made on the registered mortgage that the same has been redeemed.

Notes and Bills of Exchange. (*See Bills of Exchange and Promissory Notes.*)

Powers of Attorney must be under seal. Where conveyances of land are executed under power of attorney, it must be registered with the conveyance.

Probate Law. (*See Administration and Descent of Property.*)

Protest. Delay in giving notice of dishonor is excused where the delay is caused by circumstances beyond the control of the person giving notice. Where an inland bill (one which on the face of it purports to be both drawn and payable within Canada, or drawn upon some person resident therein) has been dishonored, it may be noted and protested for non-acceptance or non-payment, as the case may be. Where a foreign bill has been dishonored for non-acceptance it must be duly protested for non-acceptance. If it is not so protested the drawer and endorsers are discharged.

Replevy. An order for replevin may issue after plaintiff makes affidavit that he is entitled to property, that it is detained unjustly, and setting forth the value of it. The sheriff, before replevying, may require a bond from plaintiff to save him harmless, before proceeding to replevy.

Taxes are levied on real and personal property by the municipalities and collected by them. Outside the city of Halifax a tax is levied on income.

Wills must be in writing, signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses, present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator and in the presence of each other; but no attestation shall be necessary. Executors are competent witnesses. Wills of minors are invalid.

SYNOPSIS OF THE LAWS OF ONTARIO

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by R. E. KINGSFORD, Barrister at Law, Toronto. (*See Card in Attorneys' List.*)

The law throughout Canada is uniform on the following commercial matters: 1. Currency and coinage. 2. Banking, incorporation of banks, and issuing of paper money. 3. Savings banks. 4. Bills of exchange and promissory notes. 5. Interest. 6. Legal tender. 7. Bankruptcy and insolvency. 8. Patents. 9. Copyrights. There are other matters exclusively within the jurisdiction of the Dominion, but they are not commercial. The Provinces can not legislate on the above matters, although they have general jurisdiction in matters of property and civil rights. The laws in the different Provinces on the subjects within their jurisdiction vary. There is an analogy between this division of jurisdiction between the Dominion and the Provinces and that between the United States and the respective States. The difference between the two systems is that all unenumerated powers in Canada belong to the Dominion. In the United States all unenumerated powers belong to the respective States.

Actions. All actions are commenced by a writ of summons indorsed with a statement of the nature of the claim made, or the relief or remedy sought. If the claim is for a liquidated demand in money arising out of contract, express or implied, for example, on a bill of exchange, promissory note, check, account, or any simple contract debt, the writ is specially indorsed with the particulars of the claim or amount sought to be recovered. A defendant, if served within Ontario, must enter an appearance within ten days after service, inclusive of the day of service. If served out of Ontario, further time is given, according to distance. If the writ is specially indorsed, and the defendant does not appear, judgment may be signed in default of appearance without any further proof of claim, and execution issued forthwith. Should the defendant enter an appearance, pleadings will have to be served, and the action take its ordinary course. If the defendant in a specially indorsed writ appears merely for time, the plaintiff may at once give notice and apply for final judgment, after filing an affidavit setting forth the facts, made by himself or any other person, or agent, who can swear positively to the debt or cause of action, verifying the cause of action, and stating that in his belief there is no defence, and that the same was entered only for the purpose of delay. The court, upon such application, has power to order immediate and final judgment to be signed.* Inferior jurisdiction is exercised by the division or county courts. Division courts are held in the different counties throughout the Province, and have jurisdiction in: 1. All personal actions where the amount claimed does not exceed $60, or $100 when agreed to by the parties. 2. Claims and demands of debt, account, or breach of contract, or covenant or money demand where the amount or balance claimed does not exceed $100. 3. Claims for debt or money demand not exceeding $200 and interest, where the amount, or original amount, is ascertained by the signature of the defendant or person whom, as executor or administrator, he represents. No costs are recoverable in the division court as a general rule, only court fees, which are not large. County courts have jurisdiction in: 1. All personal actions where debt or damages claimed do not exceed $200. 2. In all suits relating to debt, covenant, and contract to $600, if ascertained by act of the parties or signature of the defendant, or in any similar case to any amount, if the parties by writing submit to the jurisdiction of the court. 3. Recovery of land where its value does not exceed $200. 4. Partnership accounts where stock or capital is not over $1,000. 5. Legacies not above $200 out of an estate not exceeding $1,000. 6. Claims on mortgages where sum claimed does not exceed $200. 7. Actions for redemption or equitable relief where sum does not exceed $200. 8. Contestation of creditors' claims on an estate where amount of claim does not exceed $400. They can not try: 1. Title to land where the value of the land is over $200. 2. The validity of any devise or bequest over $200 where the estate is over $1,000. 3. Actions for libel or slander, or crim. con. or seduction, or against a justice of the peace. In all these latter cases and in all actions above the limit of the county court, the high court of justice for Ontario has jurisdiction. If suits are brought in the wrong court, the parties may be deprived of costs. Priority of judgments is regulated only by the time of the delivery of the writ of execution into the hands of the sheriff, and not by the time of obtaining the judgments, and judgment creditors share equally with other creditors, gaining no priority or advantage, except that their costs are added to their claim. (*See Assignments.*)

Affidavits. Affidavits made in the United States or any foreign country, to be used in any of the courts in Ontario, may be made

* Attorneys in the States sending claims for collection to Ontario are recommended to read carefully this summary of the jurisdiction of the Ontario courts over claims in Ontario, as mistakes and disputes constantly arise, owing to American attorneys not being aware that the costs on claims vary with the amount of the claim. In division courts no costs at all are allowed, only court disbursements, and, therefore, litigant in that court, even if successful, has to pay his own costs. The tendency of legislation has been to extend the jurisdiction of the inferior courts.

before a notary public, certified under his hand and official seal, or before a commissioner residing in such foreign country, duly authorized to take affidavits, etc., to be used in Ontario.

Affirmations. Any oath, affidavit, affirmation, or solemn declaration in attestation of the execution of any written instrument or deed, or allegations of fact, or of any account rendered may be made before any judge, notary public, or commissioner. Accounts and statements are usually verified in this way when required to be sent in to assignees, trustees, executors and administrators of estates.

Aliens. Every kind of real and personal property may now be held, bought and sold by aliens as freely as though they were natural-born subjects. Although not resident in Ontario, they may be sued if they are served with notice of process. Any person not resident within the Province who brings an action in its courts, is bound, upon application made therefor, to give to the opposite party security for the costs which may be incurred in the action, generally to the extent of $400. In the county courts, security is required to the extent of $200. In cases where debt is ascertained by the signature of the defendant, the security required is $50. (*See also Judgments.*)

Arrest. One foreigner can not follow another into Ontario and have him arrested for a debt contracted abroad, but any creditor whose claim is $100 or over may obtain the arrest of his debtor upon showing by affidavit that the debtor is about to leave the Province, with intent to defraud his creditors. A married woman is not liable to arrest for debt.

Assignments. There is no insolvent or bankruptcy act in force in Canada now. In Ontario voluntary assignments by debtors supersede judgments, except judgments for alimony duly registered in Registry office against the lands of the defendant. A preference made by a debtor which has the effect of defeating any creditor is presumed to be fraudulent and void if attacked within sixty days, or if followed by an assignment within sixty days. If attacked after sixty days, the intent to prefer must be proved. If proved, the transaction is set aside, unless it is proved to have been made under pressure by the preferred creditor.

Attachment. A resident in Ontario who, being indebted to any other person, departs or absconds from this Province with intent to defraud his creditors, or to avoid arrest or service of process, and at the time of his so departing is possessed to his own use of any real or personal property, is deemed an absconding debtor, and his property may be seized and taken by a writ of attachment, for which a judge's order must be obtained upon affidavits setting forth the necessary facts.

Bills of Exchange and Promissory Notes. No stamp duty is required to be paid on bills, notes or checks. Three days of grace are allowed. In case a bill or note falls due and is payable on a legal holiday, it must be presented the day after such holiday. The legal holidays as fixed by statute, in all matters relating to bills or notes, are Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday of the Sovereign (24th of May), Dominion Day (1st of July), Labor Day (3d of September), and any special days appointed by proclamation for public holidays, fasting or thanksgiving. The legal rate of interest is 6 per cent. If a bill is dishonored abroad, in addition to interest and expenses of noting and protest, holder is entitled to re-exchange with interest to date of payment.

Bills of Sale and Chattel Mortgages must be filed in the office of the clerk of the county court of the county where the goods are situated, within five days from the date of execution. Renewal statements filed during the last month of each year of their currency are required to preserve their effect.

Claims against Estates of Deceased Persons. Where a person dies intestate, letters of administration may be granted by the surrogate court. In administering the estate, no difference is made as to judgment or other debts; all are to be paid ratably. Claims are enforced by suing the executor or administrator. Wills are proved in the surrogate court of the county where the testator had his last place of abode. Real and personal property both devolve upon an administrator. Security is required before administration granted. (*See Descent.*)

Commissions are granted by order of a judge for taking the depositions of a witness in a foreign country, or when dangerously ill, though resident in the Province, or about to quit the Province. The court gives full directions as to the execution of the commission.

Corporations are created by act of Parliament, special charter, or under the general acts relating to the incorporation of joint stock companies by letters patent. Shareholders are liable only to the amount of their shares, and when these shares are paid in full, they are discharged from any further liability, except that the directors of the company remain personally liable to the company's servants for wages incurred or earned while such directors have been in office, to the amount of one year's wages. Provision has been made for the winding up of joint stock companies.

Costs, Security for. (*See Aliens.*)

Courts—County, Division, and High Court of Justice. (*See Actions.*)

Deeds. All deeds should be in duplicate, so that one may be registered while the other is returned certified. Common forms of deeds may be used, but the statute provides a short form, with covenants and bar of dower. All deeds should be under seal. A wafer, sealing wax, or other adhesive substance will answer for a seal, but a scroll is not a seal. In conveying the estate of a married woman it is usual, although not absolutely necessary for safety, that the husband should be a party to the deed, but no acknowledgment or separate examination of the wife, apart from her husband, is required. Proof of all deeds, mortgages, etc., for registration, is made by an affidavit by the subscribing witness, *in any foreign country*—before the mayor of any city, borough, or town corporate, certified under the common seal, or before any British consul or vice-consul resident in such country, or before a judge of a court of record, or a notary public, certified under his official seal. When different parties sign before different subscribing witnesses, each such witness must make a similar affidavit as to the execution by the parties whose execution he attests, or the deed can not be registered. One credible person, male or female, who can read and write, will suffice as a witness. (*See Lands Titles.*)

Descent. Real estate descends like personalty. A widow is entitled to elect whether she will take her dower or a distributive share of the estate, according to the rules of devolution of personal estate.

Distress. (*See Exemptions.*)

Evidence. In all civil proceedings no person is disqualified as a witness on the ground of interest, as a party or otherwise. Husbands and wives are competent and compellable witnesses, save as to communications made during their marriage and proceedings consequent upon adultery. In actions by or against representatives of any deceased person, or by or against a lunatic, an opposite or interested party to the suit can not have judgment upon his own evidence as to any matter occurring before the death, unless such evidence is corroborated. An affirmation or declaration may be made by a witness if the presiding judge be satisfied that an oath would not in conscience have any binding effect.

Exemptions. The following goods and chattels of a judgment debtor are exempt from seizure under writs of execution, or distress warrants for rent or taxes: The bed and bedding, and the necessary and ordinary wearing apparel of the debtor and his family; certain chattels, not exceeding in value $150; necessary fuel and food, not exceeding in value the sum of $40; stock in all not to exceed in value $75, and feed therefor for thirty days; tools and implements of, or chattels ordinarily used in, the debtor's occupation, to the value of $100; bees reared and kept in hives to the extent of fifteen hives; lands acquired under the free grant and homestead act are exempt from seizure and sale for debt for a period of twenty years from location of land being made by locatee or his widow, heirs, or devisees.

Hire Receipts and Sale Notes. Except in the case of household furniture, to be valid as against subsequent purchasers or mortgagees without notice, these documents must be registered like a chattel mortgage with the clerk of the county court. If the document is not registered the article must be stamped with the name and address of the manufacturer, so that an intending purchaser may ascertain whether the article is paid for. If there is a seizure made by the vendor for breach of condition on a conditional sale the vendor must allow twenty days before a re-sale, during which time the purchaser may redeem.

Insolvency. There is no insolvency act in force. (*See Assignments.*)

Interest. Six per cent is the legal rate. Banks can not recover more than 7 per cent on mortgages. Parties may agree between themselves as to any rate of interest; but, where no rate has been agreed upon, the legal rate only is recoverable.

Judgments. *Foreign judgments* are all judgments recovered against any person outside of the Province, even though it be in any other Province of the Dominion. A defendant sued in the courts of the Province on a foreign judgment of a court, to the jurisdiction of which he was subject, can not set up as a defense thereto any defense which he set up, or might have set up, to the original action if he was personally served with the process in such original action, or appeared or pleaded thereto. In the case of actions on judgments obtained in the Province of Quebec, if the service was not personal any defense may be set up which might have been made to the original judgment.

Lands Titles System. Lands in Ontario may be within the "lands titles system" of transfer, which is by certificate instead of deed. A mortgage is called a *charge*. Each holder of land gets a certificate from the office for the county—on that certificate are indorsed all transfers. Where papers are sent to the United States for execution, under this system, special directions will be required.

Limitations. All actions upon simple contracts, notes, bills, accounts, and all instruments not under seal and money demands, must be commenced and brought within six years from the time the cause of action arose or accrues. When the plaintiff is under any disability, such as infancy, coverture, or lunacy, the statute of limitations begins to run from the removal of the disability. Non-resident plaintiffs have no longer time than if they were resident. As against a non-resident defendant the action may be brought within time limited after return of defendant to Ontario. All actions to recover land and real estate must be brought and commenced within ten years from the time when the right of action first accrued.

Married Women. A married woman can acquire, hold, and dispose of, by will or otherwise, any real or personal property, including any property acquired by her in any employment which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill, as her separate property, and as though she were a *femme sole*, without the intervention of any trustee. She may enter into any contract, and be sued, either in contract or tort, and be liable as if a femme sole, and her husband need not be joined as a party. All damages and costs recovered against her in an action shall be payable out of her separate estate. No husband or wife shall be entitled to sue the other for tort in a civil action. A married woman may devise or bequeath her property by will. A wife is entitled to dower out of all the lands of which her husband was seized at and after their marriage in which she has not barred her dower. Where the net value of the whole real and personal estate is $1,000 the widow is entitled to the whole of it. Where the net value of the estate is over $1,000 the widow has an absolute right to $1,000, and also her share of the residue. She may, however, claim under the old law and take her chance of doing better under it. The husband can only be tenant by curtesy out of such lands as his wife may die seized or possessed of. Woman attains her majority at twenty-one years.

Mechanics' Liens. Every mechanic, machinist, laborer, builder, contractor, or other person doing work upon, or furnishing materials to be used in the construction of, any building, or erecting, furnishing or placing machinery on or in connection with any building, has a lien for the price of the work, on such building, and the lands therewith, to the extent of the owner's interest. A statement of claim must be filed in the registry office of the county where the lands lie, within thirty days after the completion of the work, or the supplying of the materials, else the lien will cease. Proceedings to enforce the lien must be taken within six months from the completion of the work, in the high court of justice. Special laws are made as to reduction of legal expenses in these cases. Mechanics are entitled to a lien upon a chattel for work done thereon, and may sell the chattel after three months if the work is not paid for. If the chattel is delivered to the owner, the lien ceases.

Mortgages on Lands should be executed and proved like deeds. (*See Deeds.*) A mortgage must be registered in the registry office of the county within which the lands are situated. It may be discharged by a certificate signed by the mortgagee, or his assignee, or representative entitled to receive the money, and such certificate should be registered in same registry office. After maturity the mortgagee is not entitled to charge the mortgagor any interest by way of bonus for the privilege of paying off the mortgage. The execution of a certificate is proved in the same manner as a deed or a mortgage. The usual remedies of a mortgagee are sale or foreclosure, or action upon the covenant.

Partnerships. All partnerships, for trading, mining, or manufacturing purposes, must be registered in the county registry office. The declaration must set out the full names, occupation, and residence of the partners, the business they propose to carry on, and for how long their partnership has existed or is to exist. This declaration must be filed within six months after the formation of the partnership. A penalty of $100 may be imposed in case of non-compliance with the act. A similar

declaration shall be filed when and so often as any change in the partnership takes place.

Preferences. *(See Assignments.)*

Promissory Notes. *(See Bills of Exchange.)*

Proof of Claims. *(See Affirmations.)*

Succession Duties. 1. Aggregate value $100,000 or over and passing to or for father, mother, husband, wife, child, grandchild, or other lineal descendant, or daughter-in-law or son-in-law of deceased, $2 50 per $100. 2. Aggregate value $100,000, passing as aforesaid, $5 per $100. 3. Value exceeding $10,000, so much thereof passing to or for grandfather, grandmother or any other lineal ancestor of deceased, except father and mother, or to any brother or sister of the deceased, or to any descendant of such brother or sister, or to an uncle or aunt or to any descendant of such uncle or aunt, $5 per $100. 4. Value exceeding $10,000 and passing to or for any person in any other degree of collateral consanguinity than as above, or to or for any stranger in blood, $10 per $100.

Taxes. The rate for the year is fixed by the council of each municipal corporation, and lands are charged therewith. Lands may be sold for taxes when they are in arrears for three years. The owner may redeem within one year after sale on repayment of amount to purchaser at tax sale with 10 per cent added.

Wills must be in writing, and signed, but need not be sealed, by the testator or by some person in his presence and by his direction; such signature to be made or acknowledged by the testator, in the presence of two witnesses, both present at the same time, who shall sign their names as such witnesses, in the presence of the testator. A common form of attestation clause is as follows:

"Signed and declared by the above-named A. B., as and for his last "will and testament, in the presence of us, both present at the same time "who, at his request and in his presence, have hereunto subscribed our "names as witnesses.

"C. D., of Toronto, clerk. (Signed) "A. B."

"E. F., of Hamilton, merchant."

The gift to a witness, or to the husband or wife of a witness, is invalid. A will to pass personal property need only be in conformity with the law of the country in which the testator had his domicile. To pass real estate, however, the will must be valid and effectual for such purpose according to the law of the country where the real estate is situated. A will, no matter how long executed before the death of the testator, is construed as if it had been executed immediately before his death. Hence, property acquired between the date of the will and the time of the testator's death may pass by the will.

SYNOPSIS OF THE LAWS OF PRINCE EDWARD ISLAND

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. M. & D. C. McLeod, Charlottetown. *(See Card in Attorneys' List.)*

Acknowledgments. All deeds executed in the Province must, before registry, be either acknowledged by the party, or proved on oath by subscribing witness before a commissioner for proving deeds, or before the registrar. Deed executed abroad may be acknowledged by the parties, or proved on the oath of witness before the mayor of any city of the country where the deed is executed and certified under common seal of such city, or before any British consul, vice-consul, or consular agent, or before a judge of a court of record, or a notary public, certified under his official seal, or before a commissioner authorized by the government of the Province to take affidavits abroad in a court of record in the Province or to take acknowledgments of deeds abroad, or may be proved on the oath of subscribing witness before a justice of the peace in country where executed, the handwriting and official character of the justice to be certified under hand and seal of a notary public. *(See Husband and Wife.)*

Actions. *(See Courts.)*

Administration of Estates. Estates of intestates and testators are usually administered in surrogate court. Court of chancery may administer in certain cases. Administrators and executors are required to file inventory within three months, and to render an account within six months, and after that (unless further time is granted) may be cited to do so. Creditor may have administration, in case next of kin refusing. In estates under $800, executor or administrator must advertise in the *Royal Gazette* for one month, and in larger estates for three months, for creditors to prove their claims under oath within one year from date of advertisement. Claims should be proved against the estate within eight months after letters testamentary have been taken out, as after that time the executor, on being sued, may plead specially that he had no notice of the debt, and that he has applied the assets in his hands in payment of the debts proved against the estate and of which he had notice. If the personalty is insufficient to pay debts, executor or administrator may, by leave of the surrogate, sell the real estate.

Affidavits. Affidavits to be made abroad, to be used in this Province for any purpose for which affidavits might be used if made within the Province, may be sworn before a judge of a court of record, or of a superior court, or of a county court, or before a British consul, vice-consul, or consular agent, or before the mayor of any city or town, or before a notary public, provided the signature and official character of person before whom taken be certified under the hand and seal of a notary public, or under hand of a judge, clerk, or prothonotary of a court of record or of a superior or county court, and the seal of such court: or under hand of the mayor of any city or town, and the corporate seal of such city or town; or under the hand and official seal of a British consul, vice-consul, or consular agent. The person before whom oath taken may certify to his own official character and qualification under his hand and official seal. If there be any erasure or interlineation in jurat, the affidavit can not, as a rule, be used. The local government, under statutory powers, have appointed commissioners in London, New York, Montreal, Quebec, Chicago, Boston, and Philadelphia for taking affidavits for the supreme court and for taking acknowledgments of deeds.

Aliens. Previous to confederation (A. D. 1873), aliens might hold real estate not exceeding 200 acres. Now, by Dominion statute, aliens may hold real and personal property of every description the same as natural-born British subjects, and succession may be traced through aliens; but an alien is not eligible for any public office. Aliens may be summoned to defend suits in this Province in certain cases. *(See Courts.)*

A Married Woman is capable of acquiring, holding, and disposing of any real or personal property in the same manner as if she were a *femme sole*, and may enter into contracts, and may render herself liable in respect and to the extent of her separate property.

Appeals. Appeals lie from probate and county courts to supreme court, decision of which in such appeal is final. Appeal lies from supreme court (i. e., in actions originating in such court) to the supreme court of Canada at Ottawa.

Arbitration. If in any suit in supreme court matter in dispute consists wholly or in part of matters of mere account, which can not conveniently be tried in ordinary way, court or judge may order such matter wholly or in part to be referred to an arbitrator appointed by the parties or to an officer of the court.

Arrest. A resident debtor can not be arrested by process out of supreme court, except by judge's order, to be made on affidavit on proof of debt, and showing facts and circumstances to satisfy judge that there is good and probable cause for believing that debtor, unless forthwith apprehended, is about to quit the Province with intent to defraud creditor or creditors. Non-resident debtor, if found in the Province, may be arrested upon an affidavit of debt being made showing that he is a non-resident. Capias from county court may issue for any sum over $8 and not over $150, upon an affidavit being made of amount of debt and of belief that debtor is about to depart from the Province to evade payment of his debts.

Assignments and Insolvency. An assignment made by debtor unable to pay in full to a creditor with intent to give such creditor a preference is void. Such assignment if impeached within sixty days is presumed to have been made with such intent, whether same was made voluntarily or under pressure; if impeached after expiry of sixty days intent must be proved. Statute has provisions for making assignments to official assignee for payment of creditors rateably without preference.

Attachments. The property of an absent or absconding debtor may be attached upon affidavit being made of the debt and of the fact that debtor is so absent or absconding. Property of a resident debtor, except debts, etc. *(see Garnishment)*, can not be seized or attached until after judgment.

Bills of Exchange and Promissory Notes. No stamp required. No days of grace are allowed on bills payable on demand, or on presentation, or in which no time for payment is expressed. Three days of grace allowed on bills payable at sight, or at a fixed period after sight, or after date, or on or at a fixed period after the occurrence of a specified event certain to happen. If last day of grace falls on legal holiday, then day next following not being such holiday shall be last day of grace. In all matters relating to bills and notes, following days are legal holidays: Sundays, New Year's Day, Good Friday, Easter Monday, Christmas Day, Queen's Birthday (24th of May or other day fixed by proclamation), 1st of July (and if 1st falls on Sunday, then 2d of July), any day appointed by proclamation for a public holiday, general fast, or general thanksgiving, day following New Year's or Christmas if these days fall on Sunday. Foreign bills must be protested, but inland bills do not require protest.

Chattel Mortgages and Deeds of Trust. Absolute bills of sale or transfer of chattels are void (except as between grantor and grantee) unless grantee forthwith upon execution thereof take actual possession of chattels and grantor ceases to have possession. Chattel mortgage requires to be registered and to have an affidavit indorsed made by the grantee or his agent to the effect that grantor is really indebted to the grantee in the amount expressed in the mortgage, or that a consideration of nature and amount therein expressed really and truly exists, and that to the best of his knowledge and belief the mortgage was not executed for the purpose or with the intent of protecting the property therein described from creditors of the grantor, or of defrauding the creditors of the grantor or any of them. Statutes of Elizabeth (13 Eliz: chap. 5, and 27 Eliz. chap 4) are in force. Under the former all conveyances and dispositions of property made with an intention of defrauding creditors are declared to be null and void against them.

Courts. For the recovery of debts county courts have jurisdiction where debt does not exceed $150. Judge tries all cases without a jury, and no solicitors' or attorneys' fees are allowed. Sixteen circuits are established throughout the Province, at each of which a court is held in August, October, December, and March. A judgment in the county court can not affect land or title to land. Supreme court has jurisdiction in all actions at common law (except that no action can be brought for debt when amount is under $32). All actions are commenced by writ of summons. When claim is for a liquidated amount or debt, summons may be specially indorsed, and if defendant (resident in Province) fails to appear within eight days after service judgment by default may be entered and execution may issue in fourteen days after last day for appearance. Summons may be served on a British subject residing out of the Province in respect of a cause of action arising within jurisdiction or in respect of the breach of a contract made within the jurisdiction. Proceedings in like cases may be brought against any person residing out of Province though not a British subject, but instead of a summons being served upon him he is served with a notice of the summons having been issued. In these cases time for appearance will be regulated according to distance from Province. Upon a minute of a judgment in supreme court being filed such judgment binds all interest in land then held by defendant and also such as he may acquire until judgment is paid. Such judgment will take priority over a subsequent deed or mortgage, and against a previous deed or mortgage, but registered subsequently. A chancery court also exists having full equitable jurisdiction

Days of Grace. *(See Bills and Notes.)*

Depositions. Depositions cannot be used on trial of a cause unless same are taken under a special commission issued out of court in that cause for the purpose of taking evidence.

Descent and Distribution of Property. In cases of intestacy land (subject to widow's right of dower) is divided among all children or their legal representatives in equal shares, and in case there be no children or their representatives then to the next of kin in equal degree, but no representation admitted among collaterals after brothers' and sisters' children. If after death of a father, any of his children die intestate without wife or child in the lifetime of the mother, every brother and sister of the intestate shall have an equal share with her. When a brother and sister of the whole blood and a brother and sister of the half blood shall be such next of kin, the distribution shall be confined to the brother and sister of the whole blood. When the next of kin shall be a brother or sister and a grandfather or grandmother, distribution shall be confined to the brother or sister or the representatives of them. The father may be heir to his child dying without issue, and shall be preferred as heir to such child before a brother or sister of such child. Personal estate (after payment of all debts) is distributed as follows: One-third to widow and residue in equal proportions amongst children and those legally representing them; if no children or representatives, then one-half to widow and residue amongst next of kin. No representation among collaterals after brothers' and sisters' children.

Executions. Goods of defendant are bound by an execution out of supreme court from time same is placed in sheriff's hands. An execution from county court does not affect defendant's goods until same are actually levied on. Land may be sold under an execution issued out of supreme court after six months notice of such sale in manner provided by statute.

Exemptions. The wearing apparel and bedding of debtor and his family, and the tools and implements of his trade, one cooking stove and

one cow, in all amounting to $50, are exempt from seizure under county court execution. The goods exempt from seizure under an execution out of supreme court are the necessary wearing apparel and bedding of debtor and family and the tools and instruments of his trade or calling, $16 in money and his last cow.

Garnishment. All sums of money, whether liquidated or unliquidated, payable to a debtor for any cause of action other than personal torts or wrongs, can be attached by a creditor either before or after judgment.

Holidays. (*See Bills and Notes.*)

Interest. Parties may contract to pay interest at any rate agreed on. If no rate mentioned, bills and notes carry interest after maturity at 6 per cent.

Judgments. (*See Courts.*)

Limitations. On simple contracts, suits must be commenced within six years from time the debts fall due, or from the date of the last payment on account of such debt. A promise or acknowledgment in writing, signed by the debtor, is sufficient to take simple contracts out of the statute, and time will then begin to run from the date of such written promise or acknowledgment. Actions to recover any sums of money secured by any mortgage, judgment or lien, or otherwise, chargeable out of any land, must be brought within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for the same, unless in the meantime some part of the principal money or interest thereon shall have been paid or some acknowledgment of the right thereto shall have been given in writing by the person by whom the same shall be payable, or his agent, and in such case within twenty years from the last of such payments or acknowledgments.

Probate. (*See Administration.*)

Replevin. When goods or chattels have been unlawfully distrained for rent, or taken or detained, an action of replevin will lie, by which the goods are returned by the sheriff to the party from whom they have been taken, on his entering into a bond with sureties that he will prosecute for damages. This action is seldom adopted, except in cases of illegal distraint for rent.

Taxes. Commercial travelers not permanently residing in the Province are subject to a tax or license fee of $20 a year. Such commercial travelers selling intoxicating liquors are subject to a tax of $200.

Wills. Wills must be signed in presence of two witnesses present at the same time, who shall in presence of the testator and in the presence of each other sign their names as witnesses. A witness to a will can take no benefit under it, but an executor named in will may be a witness.

SYNOPSIS OF THE LAWS OF QUEBEC

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. McGIBBON, CASGRAIN, RYAN & MITCHELL, Advocates, Montreal. (*See Card in Attorneys' List.*)

Acknowledgments. The proof in respect of debt is made by vouchers, deeds, private writings, examination of debtor, affidavit of the plaintiff, and verbal testimony, according to the nature of the case.

Actions may be brought in the courts of the Province by any party, whether a resident or not, who has a civil right to enforce, or who seeks a remedy for an injury suffered. The inhabitants of the Province may be sued there for the fulfilment of obligations contracted by them in foreign countries, even in favor of a foreigner (Civil Code, Art. 28). But every person not a resident in the Province who institutes any civil proceeding in its courts may be compelled by the defendant, if the latter is diligent, to file within a reasonable delay, fixed by the court, a power of attorney authorizing the institution of the action, and to give the opposite party security for the costs which may be occasioned by that party through the proceedings, which are liable to amount from $20 to $150. The names in full of the plaintiffs and their places of residence and occupation, and the residence of the defendant must be given in writs, as also the partnership name when a firm is concerned. The initials of the defendant are sufficient when the action is based upon a promissory note or other such paper when the first name is not signed in full. In the matter of corporations, the principal place of business should be mentioned, and under what laws incorporated.

Affidavits can only be taken in connection with judicial proceedings, or in cases specially provided by statute; otherwise, officer receiving them is criminally liable. Taken within the Province, to be used in its courts, must be sworn to before some officer of the court. Commissioners of the superior court can receive affidavits for use in the circuit court. Like force is given to all foreign affidavits taken before the mayor or chief magistrate of any city, borough, or incorporated town in Great Britain, the colonies, or any foreign country, under their hand and official seal, or before any British consul or consular agent in a foreign country to which he is appointed.

Aliens have a right to acquire and transmit property in the same manner as British subjects. Although not resident in Canada, they may sue or be sued in its courts for the fulfilment of obligations contracted toward or by them, even in foreign countries, provided a legal service can be effected upon them within the Province. (*See Actions.*) They can not, however, hold any public office nor exercise the franchise. (*See Actions, Corporations.*)

Assignment and Insolvency. A trader can not give one or more creditors a preference over his other creditors by chattel mortgage, bill of sale, or otherwise. Creditors may, in their own name, impeach the acts of their debtor in fraud of their rights, as for instance, a payment made by an insolvent debtor to a creditor knowing his insolvency is deemed to be made with intent to defraud, and the creditor may be compelled to restore the amount so paid. No abandonment of property can be made in the absence of capias or a demand of assignment. Every trader who has ceased his payments may be required, by any unsecured creditor, for a sum of $200 or upward, or any creditor holding a judgment for $80 or upward, to make an abandonment of his property for the benefit of his creditors in the office of the prothonotary of the court for the district within which the said debtor resides or the capias issued. He must file in court a statement, notice of which must be given to all his creditors by mail, and published in the Quebec official *Gazette*. The court appoints a curator, after taking the advice of the creditors, at a meeting called for that purpose (in the event of the majority of the creditors in amount and number agreeing, the court is bound to appoint their nominee, but if they do not, the court has the right to appoint another), and the property is sold for the benefit of the creditors, amongst whom its proceeds are divided ratably, after payment of privileged claims. This abandonment only discharges the debtor to the extent of the amount which his creditors have received on account of their claims. The winding-up of insolvent banks, insurance companies, and trading corporations is regulated by a Dominion statute of 1882 and amendments.

Attachment and Capias. A person may, even before judgment, upon affidavit, seize the property of his debtor, whether in the hands of such debtor himself, or of third parties, or arrest his person, on the ground of secretion of property, absconding with intent to defraud, and, in the case of insolvency, of his refusing to assign. A capias for the arrest of a debtor can not be issued for a sum less than $40, but his property may be seized for a debt of $5. To justify a capias, the debt must be a personal one, and contracted within the Province. A previous order from a judge is required if the capias is demanded for unliquidated damages. Women, priests, and septuagenarians are not liable to be capiased.

Banks. (*See Corporations, Interest.*)

Chattel Mortgages do not exist in Quebec. (*See Deeds and Mortgages, and Liens and Privileges.*)

Corporations are created by Act of Parliament, special charter, or under the general act relating to the incorporation of joint stock companies by letters patent. Shareholders are only liable to the amount of their shares, and when these shares are paid in full, they are discharged from further liability, except as to debts due to the company's servants. The shareholders in a bank, however, are, in the event of insolvency, liable to an amount equal to the par value of the shares held by them, in addition to any amount not paid upon such shares. Provision has been made for the winding up of joint stock companies under the winding-up act. (Dominion.) Aliens can hold stock and are eligible for directors in any joint stock company; but the majority of the directors of a bank must be British subjects, and the majority of every company must be resident within the Dominion. Foreign commercial corporations may transact business, sue, and be sued here. They may be forced to pay a small provincial tax, if they have a place of business in the Province. Foreign insurance companies are required to deposit with the government a certain amount in bonds or cash before they are permitted to do business in the Dominion.

Courts. The circuit court has original jurisdiction where the amount demanded is less than $100; the superior court where it is that sum or upward. An appeal can be taken to the court of review and court of queen's bench in all cases over $100. An appeal can also be had from the court of queen's bench to the supreme court of Canada, and to her majesty's privy council, in England, in all cases over $2,500; and in cases for smaller amounts, if future rights are involved, or if a fee due to Her Majesty is claimed by the action.

Deeds, Mortgages, and Registration. Mortgages and deeds affecting the title of lands held under the French system must be passed before a notary public. Where the lands are held in free and common socage, such deeds may be passed, either before a notary, or before two witnesses, one of whom makes affidavit to the signatures, in order to prove their authenticity. To take effect from the time they were made, they must be registered within thirty days; otherwise, they do not take effect, as regards third parties, until registered. Mortgages can only be granted on real estate; they can not be given on movables or chattels, except as provided regarding shipping; effects may, however, be pledged by being placed in the hands of a creditor to secure his debt. Judgments give liens only on the real property against which they are registered.

Execution may, in all cases, be issued after fifteen days from the rendering of the judgment. In summary matters the delay is only eight days. It may, however, be taken before the expiration of these delays upon causes which would justify a seizure before judgment. Except for taxes, executions can not issue against immovables unless the judgment is for a sum amounting to or exceeding $40, including costs.

Exemptions. 1. The bed, bedding, and bedsteads in use by him and his family. 2. The ordinary and necessary wearing apparel of himself and his family. 3. Two stoves and their pipes, one pot-hook and its accessories, one pair of andirons, one pair of tongs, and one shovel. 4. All the cooking utensils, knives, forks, spoons, and crockery in use by the family, two tables, two cupboards or dressers, one lamp, one mirror, one washing stand with its toilet accessories, two trunks or valises, the carpets or matting covering the floors, one clock, one sofa and twelve chairs, provided that the total value of such effects does not exceed the sum of $50. 5. All spinning wheels and weaving looms intended for domestic use, one axe, one saw, one gun, six traps, such fishing nets, lines, and seines as are in common use, one tub, one washing machine, one wringer, one sewing machine, two pails, three flat irons, one blacking brush, one scrubbing brush, one broom. 6. Fifty volumes of books, and all drawings executed by the debtor or the members of his family for their use. 7. Fuel and food sufficient for the debtor and his family for three months. 8. One span of plough horses or a yoke of oxen, one horse, one summer vehicle and one winter vehicle, and the harness used by a carter or driver for earning his livelihood, one cow, two pigs, four sheep, the wool from such sheep, the cloth manufactured from such wool, and the hay and other fodder intended for feeding the said animals; and moreover, the following agricultural tools and one plough, one harrow, one working sleigh, one tumbril, one hay-cart with its wheels, and all harness necessary and intended for farming purposes. 9. Books relating to the profession, art, or trade of the debtor to the value of $200. 10. Tools and implements, or other chattels ordinarily used in his profession, art, or trade to the value of $200. 11. Bees to the extent of fifteen hives. 12. Consecrated vessels and things used for religious worship. 13. Family portraits. 14. Immovables declared by a donor or testator or by law, to be exempt from seizure, and sums of money or objects given or bequeathed upon the condition of their being exempt from seizure. 15. Alimentary allowance granted by a court, and sums of money or pensions given as alimony, even though the donor or testator has not expressly declared them to be exempt from seizure; they may, however, be seized for alimentary debts. 16. All vessels, boats, and other fishing craft, tackle, nets, seines, lines, or other fishing apparatus, and provisions belonging to any fisherman, and necessary for his subsistence and that of his family and for his fishing operations; such effects may, however, be seized and sold for their purchase price, but not between the first day of May and the first day of November. 17. Pay and pensions of persons belonging to the army or the navy. 18. Contingent emoluments and fees due to ecclesiastics and ministers of worship by reason of their current services and the income of their clerical endowment. 19. Salaries of public officers, with the exception of those of public officers and employes of the Province, whether permanent or not, are seizable for: (*a*) One-fifth of every monthly salary not exceeding $1,000 per annum. (*b*) One-fourth of every monthly salary exceeding $1,000, but not exceeding $2,000 per annum, and (*c*) One-third of every monthly salary exceeding $2,000 per annum. 20. Salaries of city or town clerks in incorporated cities or towns, except as to the

proportions mentioned in paragraph 9. 21. All other salaries and wages, at whatever time and in whatever manner payable for. (*a*) Four-fifths when they do not exceed $3 per day. (*b*) Three-quarters when they exceed $3 but do not exceed $6 per day, and (*c*) Two-thirds when they exceed $6 per day. *Note.*—The things mentioned in paragraph 11 and following are not only exempt from seizure, but absolutely unseizable.

Foreign Judgments are enforced by way of action at law. If they were rendered out of the Dominion of Canada, any defense set up, or that might have been set up, to the original suit may be pleaded to the suit upon such judgment; but, if the first judgment was rendered in any of the other Provinces of the Dominion in a suit in which the defendant had been served personally, or had appeared, no defense that might have been set up to the original suit can be pleaded to the suit on such judgment. In suits against corporations, service upon the proper officers, according to the law of the place where such service is made, is held to be personal service. If the service have not been personal, or if in the absence of personal service the defendant have not appeared, any defense which might have been set up to the original suit may be made and pleaded to the suit upon such judgment.

Husband and Wife. In default of an antenuptial contract of marriage, which must be in notarial form, there takes place between the consorts, by the mere operation of law, community of property, which is in the nature of a partnership, and of which the husband is the head and has the sole control. Immovable property belonging to either consort before marriage, or inherited from father, mother, or other ascendant during marriage, remains the private property of such consort, and is excluded from the community. A married woman can not become a public trader without the authorization, expressed or implied, of her husband. If so authorized, a wife, who is a public trader, may obligate herself for all that relates to her commerce, and in such case she also binds her husband, if there be community between them. Separation as to bed and board, which does not dissolve the marriage tie, is obtained from the tribunals for cause. It involves separation as to property, if community existed before. Divorce is only granted by a special act of Parliament.

Interest. Any interest may be charged which the parties may lawfully agree upon. If there is no agreement, or if the rate per month is not mentioned, the law fixes the rate of interest at 6 per cent. So when the interest agreed upon is for a period less than a year, without mention of what the legal interest would be.' Corporations, except home and British insurance companies, and those constituted for religious, educational, and charitable purposes, in the Provinces of Ontario and Quebec, can not receive more than 6 per cent, and those mentioned more than 8, under severe penalties. Banks are not subject to any penalties for usury, but can not exact more than 7 per cent. *Note.*—A bill regarding usury was submitted to the Dominion Parliament at its last session, but has not yet become law.

Judgments are valid for thirty years. In regard to movables, executions thereon may issue in eight or fifteen days and sale effected in short delays. The registration of a judgment against the immovable property of the debtor operates as a mortgage claim thereon in the creditor's favor. It takes about a week to obtain judgment in either the superior or circuit court if the action be not contested.

Liens and Privileges. In cases of insolvency, the unpaid vendor of a thing has two privileged rights: A right to revendicate it, and a right to preference on the proceeds of the sale; but these rights must be exercised within thirty days from the date of delivery. But if the debtor is not insolvent, the creditor can only revendicate subject to the following conditions: 1. That the sale is not made on credit. 2. That the thing sold is still intact and in the same condition. 3. That the thing sold has not passed into the hands of a third party who has paid the price. 4. That the revendication be exercised within eight days of the delivery, thirty days in case of insolvency. He has also the right to demand the dissolution of the sale, by reason of nonpayment of the price, if the thing sold remain in possession of the buyer; but in case of insolvency, this right can only be exercised during the thirty days next after delivery. Sale is complete by the consent alone of the parties, although no delivery be made. The seller is not obliged to deliver the thing if the buyer does not pay the price, unless a term has been granted for the payment of it, nor, in the latter case, if the purchaser, since the sale, has become insolvent. A promise of sale, accompanied by actual delivery, is equivalent to a sale. The right of stoppage in transitu may be exercised when the goods are in possession of third parties as agents for their delivery.

Limitation of Actions. Judgments and registered titles to and claims against real property can only be prescribed by thirty years, but possession under a translatory title as proprietor, and in good faith, of an immovable for ten years, covers defects of title. Actions in restitution of minors for lesion, in rectification of tutors' accounts, and in rescission of contracts for error, fraud, violence, or fear, are prescribed by ten years. After the same delay architects and contractors are discharged from warranty of work done or directed. Actions on bills of exchange, promissory notes, accounts, and generally all claims of a commercial nature, are prescribable by five years. Prescription of corporate movables takes place after the lapse of three years, reckoning from the date of possession, in favor of a possessor in good faith. There are also certain short prescriptions of two years, and one year, and statutory limitations. Prescription may be renounced or interrupted.

Married Women can not become public traders without the authorization of their husbands. A wife, who is a public trader, if separate as to property, obligates herself for all that relates to her commerce to the extent of her own property. If there be community of property between them, she also binds her husband, and the property of the community is liable for the debts of the business carried on by her.

Notes and Bills of Exchange. Commercial paper includes negotiable instruments for the payment of a specific sum of money, payable absolutely and at all events. It is transferable by indorsement and delivery, or, when payable to bearer, by delivery either with or without indorsement. When a particular place of payment is mentioned, not necessarily a bank, presentment must be made there, and if not paid, the note must be protested for non-payment in order to hold the endorsers. If payable at a bank, presentment may be made either within or after usual banking hours. When payable generally, i. e., when no place of payment is mentioned in the instrument, presentment must be made to the party primarily liable, either personally, or at his domicile, or office, or usual place of business. If he be dead, or absent from the Province, presentment may be made at his last known residence or place of business. In the case of insolvency, all current paper of the insolvent becomes immediately due and exigible. The place of payment of a draft may be fixed by the acceptor in his acceptance. The commercial law of Quebec is founded mainly on the French law, but a great many details thereof come from the old English law. Three days of grace are allowed on bills and notes payable with a term or at sight, but no grace is allowed where they are payable on demand. If the day on which they would otherwise become due is a legal holiday, the delay is of right extended to the next day. Payment must include interest from the last day of grace and all expenses of noting and protesting and notices legally incurred. In the case of bills payable elsewhere than in Canada and Newfoundland, damages are also allowed equal to the costs of exchange and re-exchange. Indorsers and other parties secondarily liable are only held by protest and notice. Bills of lading and warehouse receipts are by statute made transferable by endorsement and delivery, but they can not be transferred as security for an antecedent indebtedness.

Partnerships must be registered in the office of the county registrar and prothonotary of the superior court. The same rule applies to joint-stock companies and to persons carrying on business alone under a name other than their own. The laws applicable to commercial partnerships are derived from the French and English commercial laws. The property of the partnership is to be applied to the payment of the creditors of the firm, in preference to the separate creditors of any partner; and in case such property be found insufficient for the purpose, the private property of the partners or of any one of them is also to be applied to the payment of the debts of the partnership; but only after the payment out of it of the separate creditors of such partners or partner respectively. Partnerships may be limited or general. If limited, the following declaration must be registered: 1. The name or firm of the partnership. 2. The general nature of the business to be carried on. 3. The names of all the general and special partners, distinguishing which are general and which special, and their usual place of residence. 4. The amount of capital contributed by each special partner. 5. The period at which the partnership commenced and that of its termination. The general partners in a limited partnership are jointly and severally liable for the debts of the partnership, but the special partners are only liable to the extent of the amount they contributed. If the above statement is not registered all the partners are jointly and severally liable. In general partnerships all the partners are jointly and severally liable. An agreement by which one of the partners shall not be liable for the losses of the partnership is null as toward third parties, but binding between the partners themselves. If a partnership be dissolved, or a judicial demand be made for such dissolution, the court or a judge, upon demand of one of the partners, after notice given to the others, has power to appoint one or more liquidators. The liquidator must give the security fixed by the court or judge and be sworn to faithfully perform his duties before he can act. He is subject to the summary jurisdiction of the court or judge. He liquidates the business with the consent of the partners, or in default of such consent, with the approval of the court or judge after notice to the partners.

Wills. Wills may be made in three different forms: 1. In authentic form, to wit, proved before a notary public and two witnesses, or before two notaries public. The original will, made in authentic form, remains with the notary, who furnishes certified copies thereof. 2. In holograph form, to wit, they must be wholly written and signed by the testator, and require no witnesses; and a will so made in a foreign country disposing of property in the Province of Quebec would be valid here. 3. In the form derived from the laws of England, to wit, before two witnesses, who attest and sign the will immediately in presence of the testator and at his request. Wills made in authentic form need no probate, but those made in the other forms must be probated. Any one can dispose absolutely, and without restriction, of the whole of his property, movable or immovable, by will. Executors appointed under a will have possession of the estate of the testator, and are allowed a year and a day to carry out the provisions of the will. They can be given the most absolute powers by the testator, and their seizin may be extended beyond the year and the day allowed.

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