

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. UNDERWOOD & THACH, Attorneys at Law, Birmingham. (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. The defendant in such suits may demand a bill of items on particulars.

Acknowledgments and proofs of conveyances may be taken within this State 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 and clerks 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.

Any number of grantors may be joined in one certificate. All officers without the State, making these certificates, should be careful to impress them with their official seals; and this is best, though not necessary, when the certificates are made within this State.

Actions. All ordinary 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 residents of the State may be begun by attachment in cases specified by statute, upon bond and affidavit being made. Suits against non-residents may be commenced by attachment and publication. Every householder or freeholder must be sued in the county of his residence; or, where there are joint defendants, in the county of the residence of any one of them. For recovery of land the regular action of ejectment may be brought or the statutory action for the recovery of land; and suit must be brought in the county where the land lies. Personal property is recovered by an action of detinue. All actions survive to the heir or administrator according to their respective rights. Non-resident plaintiffs are required to give security for costs or make deposit with clerk before commencing suit. Personal representatives must be sued in the county in which letters were granted, but served with process in any county.

Administration of Estates. Letters testamentary or of administration are issued out of the probate court of the county of decedent's residence 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. If held by the personal representative, he must file them in the office of the probate judge who granted letters, within twelve months after such grant; or if accruing thereafter, within six months after the same accrued. 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 reported 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, and, whether resident or non-resident, may take, hold, and dispose of all kinds of property as native citizens might.

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 and enforced 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 and in cases of alleged lunacy.

Assignments and Insolvency. Every general assignment made by a debtor, or 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, pledges, or pawns 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 the 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. 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 in towns of 2,500 inhabitants, and not less than \$15,000 in towns of less than 2,500 inhabitants, 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 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.

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.

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, unless part of the purchase-money be paid, and the purchaser put in possession, 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, default, or miscarriage of another, or upon consideration of marriage, except mutual promises to marry; 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, and expressing the consideration.

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, and has generally the same rights as married women over 21 years of age. 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. Leasehold estates may be created to last ninety-nine years.

Corporations. Every company, corporation, or association, not organized under the laws of Alabama, engaged in any other business than insurance, 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 president 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 also 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.

Costs. The successful party in all civil actions is entitled to full costs and to judgment and execution therefor, as a general rule; but to this, there are some exceptions made by statute, in cases of tender, usury, set-off, and trifling damages recovered in actions for torts. The successful party is also liable for costs made by him if they can not be made out of his defeated antagonist. Costs may also be imposed as terms upon a party in-fault, who asks indulgence from the court; and may in equity be imposed much at discretion of the chancellor.

Courts. Terms and Jurisdiction. The supreme court, except to issue writs of injunction, habeas corpus, quo warrant, and other remedial and original writs necessary to its supervision of inferior courts, and impeachments of judicial officers, has only appellate jurisdiction and cases are tried on the record sent up. Circuit courts have unlimited common law jurisdiction when the matter or sum in controversy exceeds \$50, and exclusive jurisdiction of libel, slander, assault and battery, and ejectment. The courts of chancery have exclusively 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 set out in writs. Partnership may be sued in courts of law in firm name, without setting forth names of copartners, but judgment in such suit binds only partnership's property, not that of individual partners. 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.

Creditors' Bills. When an execution has issued from any court, and has not been satisfied, the plaintiff therein, or any person for whose benefit execution issued, may file a bill to have discovery of the property of the defendant, belonging to him or held in trust for him, and to prevent the transfer, payment, or delivery thereof to the defendant, except when the trust was created by some person other than the defendant. The court may bring any party concerned before it, and decree such property, or the defendant's interest therein, to the satisfaction of the plaintiff's debt. Creditors generally, with or without liens, may file a bill to discover and subject to the payment of their debts, property of their debtor fraudulently transferred or conveyed, or attempted to be so transferred or conveyed, by grant, collusive judgments, or otherwise. Any number of creditors may join in such bill; and the debtor must answer on oath and disclose all his property, in which he has any interest legal or equitable, and where and in whose possession the same may be found; and the court, in term or vacation, must make all decrees and orders necessary and proper to reach and subject such property to the payment of such debts; and, to that end, may appoint a receiver, and require and enforce conveyances, delivery, and payments to him. The debtor himself, after answer, may, in a proper case, be subjected to examination and answer under oath, in the premises.

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 succeeding business day. Holidays are Sundays, Christmas day, 1st January, 22d February, 26th April, 4th July, Thanksgiving day, Good Friday, Mardi Gras, January 19th, June 3d, April 26th, and the 1st Monday in September.

Deeds. Deeds for the alienation of lands must be written or printed, or partly written and partly printed, on parchment or paper, and must be signed at their foot by the grantors, or their agents, having due written authority. If grantors can not write their names, then their names must be written for each of them, with the words "his mark" written over or against each name, and it is usual for each grantor to make his cross-mark, or touch the pen while it is being made. The execution of the deed must be attested by at least one witness; and two are required where grantors execute them by making marks. All witnesses must be able to write, and actually write their names as such. Acknowledgment of execution by grantors dispenses with the necessity for witnesses, but it is

safest to have both. A seal is not necessary to convey the legal title. Any instrument executed by the grantors, with the requisite formalities, is effectual to pass the legal title to the grantee, if such was the intention of the grantors, to be collected from the entire instrument. The names of all the grantors should be set out in the body of the instrument. (See also *Acknowledgments and Conveyances*.)

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 interrogatories by a commissioner appointed by the court for that purpose. The commissioner may be any suitable person, need not be an officer. In equity suits, where witnesses live within 100 miles of the place of trial, depositions may be taken by oral examination before the register, or a special examiner, or commissioner appointed for the purpose.

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 and other courts having equity powers have exclusive jurisdiction of divorce and all matters pertaining thereto, and divorce 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, if the defendant be a non-resident, 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 or she 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, suitable to the estate and condition of the parties, 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.

Evidence. All testimony must be given on oath or affirmation; and unless otherwise provided in open court. In civil suits, parties and interested persons are competent; but they can not testify as to any transaction with, or statement by, any deceased person whose estate is interested in the result, or when such deceased person, at the time or such transaction or statement, was acting in any representative or fiduciary relation to the party against whom such testimony is offered, unless called to testify by the party to whom such interest is opposed, or unless the testimony of such deceased person is introduced by the party whose interest is opposed to that of the witness, or has been taken and is on file in the cause. A witness disqualified by interest, can not render himself competent by transferring his interest. Conviction of perjury and subornation of perjury make one incompetent as a witness; of other crimes, goes only to his credibility. The execution of any written instrument may be proved by the maker himself, without calling the attesting witnesses thereto. All written instruments, the foundation of the suit, purporting to be executed by the defendant, or alleged in the complaint to be executed by him, are self-proving, unless the execution thereof be denied by sworn plea. The same rule applies to written assignments, when suit is brought by the assignee of such contracts. The existence of corporations and firms bringing suit is not in issue, and need not be proved, unless denied by sworn plea. The testimony of witnesses may, in certain cases, be taken out of court, and in writing. (See *Depositions*.) Conveyances duly executed and recorded, patents from the United States, and certificates of registers of the land office of the United States, are admissible without proof; also certified copies from the records of any land office in this State; of the books of the U. S. surveyor-general; of field-notes, from the probate judge; from the books kept in the office of any public officer, made by the custodian thereof; and certificates of the head of any bureau or department of the general government. Entries in physicians' books, those made by deceased guardians, administrators, and trustees in books kept by them, prices-current, marriage registers, and certified copies thereof, are competent and presumptive evidence of the facts therein stated.

Executions. Writ of *fiert facias* is a lien only within the county in which it is received by the officer, on lands and personality 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's 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 \$30, thirty days; over \$30, 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 by her to be of her own free will and accord, on an examination separate and apart from her husband. Any person may, by stipulation in writing, waive whole or any specific part of exemption of personality, 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.

Foreign Corporations. Corporations, not created by the laws of Alabama, may carry on business within the State, upon compliance with the conditions imposed by the statutes. They must have a known place of business, and an authorized agent within the State, which must be designated in statements filed with the Secretary of State or the Auditor; must make a proper showing of their financial ability and responsibility, and pay the franchise or privileged taxes imposed on them. Upon compliance with these requirements they may acquire and hold, by purchase, subscription, or otherwise, if their charters so allow, and own and vote shares in the capital stock of any domestic corporation. Foreign corporations, having fully complied with the laws regulating their doing business in this State, and actually doing business therein, are invested with the same rights of eminent domain, and remedies for the enforcement thereof, as like railroad, mining, quarrying, and manufacturing corporations created and organized in this State.

Foreign Judgments. Judgments rendered in sister States are conclusive in Alabama, if by the laws of the State in which they were rendered they would be there conclusive. They can be enforced, however, only by suit in the courts of Alabama; in which may be put in issue the facts necessary to give the foreign court jurisdiction; and if it be shown that such facts did not exist, the judgment will be held a nullity, although it may recite the existence of such jurisdictional facts.

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, or after judgment, without bond.

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*.)

Injunctions. Injunctions can be granted, returnable into any chancery court, or other court having equitable jurisdiction, by judges of the supreme and circuit courts, and other judges when specially authorized, and chancellors, either in term time or vacation. Uniformly, a bond is required as a condition to their issue, the amount of which is fixed by statute, or by the officer granting the application for the injunction.

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, but when a certified statement thereof, made by the clerk of the court, is filed in the office of the probate judge it becomes a lien on all property of the defendant therein in the county, which is subject to execution, for ten years, to enforce which execution may issue at any time within that period. 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, material men, and laborers have a lien on houses built and the ground on which they stand upon complying with the law. (Code 2723-2752.)

Jurisdiction. The supreme court has jurisdiction of appeals from all inferior courts of record, and supervision and control of them by its original process; and it has original jurisdiction of impeachments of all judicial officers from whose courts appeals may be taken directly to the supreme court. The circuit courts have original jurisdiction at law in all matters civil and criminal; but in civil cases only when the amount in controversy exceeds \$50. It has jurisdiction also of appeals from the courts of justices of the peace, and notaries public having and exercising the same powers with justices. The chancery courts have original and appellate equity jurisdiction, and are invested with authority to remove the disabilities of coverture, and, within limits, also those of non-age, and to grant divorces and decree alimony. The same jurisdiction at law, vested in the circuit courts, and the same jurisdiction in equity, vested in chancery courts, the legislature in some cases has combined in city courts created by it. It has also created local criminal courts with general jurisdiction in criminal matters. Justices of the peace, and notaries public with justice's powers, have civil jurisdiction in all cases where the amount in controversy does not exceed \$100, except in cases of libel, slander, assault and battery, and ejectment. Their criminal jurisdiction, except in petty misdemeanors, is limited to preliminary examinations, when they may discharge, bail, or commit without bail.

Licenses. For the practice of law and medicine, and the carrying on of a number of vocations and kinds of business, licenses are required, which are granted only upon the passing of prescribed examinations. For purposes of revenue and police, a license tax is imposed by the State on a great number of occupations, trades, and enterprises; and the power to impose similar license-taxes is granted to municipal corporations, and, to some less extent, to counties. The exemptions from these license-taxes are comparatively few.

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, also on crops grown on rented premises for rent of the current year.

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 its 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.

Limited or Special Partnerships. Limited partnerships may be formed by compliance with the terms of the statute. The persons desiring to form one, must make and sign a certificate, showing: (1) The partnership name; (2) The general nature of the proposed business; (3) The names of all partners, distinctly showing who are special partners and who are general partners; (4) The amount of capital contributed by each special partner; (5) The date of commencement and termination of the partnership. This certificate must be acknowledged, and the original or a transcript of it filed and recorded in the office of the probate judge of each county where the partnership has a place of business. Affidavit showing payment of the contributions of each special partner must be filed with it. Until then, the partnership is not complete. General partners are liable for all debts, as in other partnerships, and they alone manage the business of the concern. Publication of the terms of partnership must be made in two papers, designated by the judge of probate, for six weeks, otherwise the partnership will be deemed a general one. Fraud or falsehood in the required statement, or otherwise in the business, the giving of preferences by the partnership, the use of the special partner's name, if with the consent or knowledge of the special partner, make him liable as a general partner, as do also any material alterations, with his consent and knowledge, in the membership, business, or assets of the partnership. Acting in good faith and conformably to law, the special partner is liable only to the extent of his capital invested, no part of which can be withdrawn until all partnership liabilities are satisfied. Dissolutions of such partnerships can be made only after three weeks' notice, filed and published three weeks in a newspaper in, or nearest to, each county where the partnership has a place of business.

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.

Mines and Mining. A system of regulations for mines and mining has been adopted (Code 1896, Secs. 2899-2936, Acts 1896-7, pp. 1099-1112), the numerous and minute provisions of which may be there found. They are hardly capable of intelligible condensation.

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 within the time prescribed by statute. Homestead realty can not be mortgaged or otherwise alienated without the voluntary 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, reverts 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 reverts 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.

Notaries Public. The Governor of the State may appoint a competent number of commercial notaries public, in each county in the State, whose term of office is three years. There is no limit to their number prescribed by the statute. Women are eligible. These notaries are required to give bond and keep an official seal and register. They are invested with all the authority and powers conferred by commercial usage, and the laws of this State; and may administer and certify oaths; take acknowledgment and proof of conveyances, and instruments relating to commerce and navigation and certify the same; and demand acceptance and payment of all commercial paper, protest the same for non-acceptance and non-payment, and give notice thereof as required by law. In addition to these commercial notaries, one may be appointed in each precinct, and one in each ward of any town or city of over 5,000 inhabitants, who shall have and exercise, besides the usual powers of a notary public, the same powers and jurisdiction, within his precinct or ward, as justices of the peace.

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 accounts of executors and administrators, of the sale and disposition of the real and personal property belonging to, and the distribution of, testates' 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.

Records. All courts of general jurisdiction keep the records of their own proceedings. The records of conveyances, deeds, mortgages, statutory liens, docketed judgments, marriages, wills, estrays, tax-assessments, and tax-sales, are kept in the office of the probate judge of each county. Petty courts, though not courts of record, are required to keep dockets whose entries show their proceedings.

Redemption. Real estate sold under execution, mortgage, deed of trust, or decree in chancery, may be redeemed within two years from the date of sale by the debtor, his vendee, junior mortgagee, or assignee of the equity of redemption, by payment of the purchase-money, with 10 per cent per annum thereon, and all other lawful charges, which include taxes paid, and any balance due on the mortgage debt, if the mortgagee purchased at his own foreclosure sale. Tender of the amount rightly due for redemption has the effect to divest the title out of the purchaser and invest it in the debtor, or whoever may rightly claim to redeem under him. This right to redeem within two years is conditioned upon the delivery of the property to its purchaser on demand, within ten days after the sale. The purchaser, on proper tender, must convey to the redeemer such title as he acquired; and if the land has been delivered to him, give up the possession; and if he refuses to do so, the possession may be recovered by an action of unlawful detainer. Judgment creditors of the debtor, other than those by confession, collusion, or fraud, may, within two years from sale, redeem in like manner, by paying purchase-money bid at the sale, 10 per cent per annum thereon, and all lawful charges, and by further crediting the debtor upon a subsisting judgment, with at least 10 per cent of the amount originally bid for the land. The purchaser, however, may meet this credit, by making an equal credit on a subsisting judgment against the debtor, and retain the land purchased, unless the proposed redeemer will give a further credit of at least 10 per cent on a subsisting judgment against the debtor, which may be met again by the purchaser, by a like credit, and so on. Heirs or personal representatives of either the debtor, or those deriving right to redeem from him, or of judgment creditors may exercise the rights of redemption of those under whom they respectively claim. The debtor, or those standing in his right, may redeem from a judgment creditor who has redeemed, and so also may another judgment creditor. The value of all permanent improvements made by the purchaser is part of the cost of redemption. The right of judgment creditors to redeem does not depend on the right of the debtor to do so.

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

Revision. The Constitution makes it the duty of the legislature to provide, in every period of ten years, for the revision, digesting, and promulgation of all statutes of this State of a general nature. The first code was adopted in 1852. Since then, there have been revisions in the years 1867, 1876, 1886, and 1896.

Service. The sheriff is the chief executive officer in each county, and in person, or by deputy, may execute all process from courts of record or petty State courts. Process of municipal courts is executed usually by city marshals, their deputies, or policemen. The process of justices' and notaries' courts is usually executed by constables or their deputies. Original process in civil actions and chancery suits is executed, when the defendant resides within the State, by personal service. If defendants live in several different counties, suit may commence in any one of these, and all defendants be brought in by branch process. Corporations may be served by personal service on the president, secretary, cashier, station agent, or any other agent thereof. Lessee of any railroad, using same, may be served by execution of process on any station agent or person in charge of depot on its line. A foreign corporation may be served by executing process on any designated agent transacting its business in this State. Both corporations and individuals who can not be served personally may be brought in by publication. Infants may be served personally, or by service on the parents or guardians, or on persons having charge of them, or otherwise, if so directed by court of chancery. Lunatics are served by personal arrest, or service on those in charge of them. The county is served by execution of process on the probate judge. Receivers may be served personally, or, if not found in the State, by service on any agent in their employment within the State. Subpœnas to witnesses may be left at the residence of the witness, but issued in term time, must be served personally on him.

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 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 assessment, 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.

Testimony. (See *Depositions and Evidence*.)

Transfer of Corporation Stock. Shares in private corporations are personal property. They are transferable on the books of the corporation as is required by its by-laws, rules, and regulations. If required that they be transferred upon the book or books of the corporation, transfers otherwise made are good between the parties but invalid as to creditors or purchasers without notice, except from the time such transfer shall have been registered or made on the books of the corporation. It is the duty of every corporation to require transfers of its stock to be registered on its books.

Trust Companies. No general legislation has been enacted in this State respecting trust companies by name. Provision has been made for the incorporation of any two or more persons associating themselves for the carrying on of "any industrial business," or for "any lawful enterprise," if not otherwise provided for by law. Corporations thus organized are authorized to have a capital stock not exceeding \$10,000,000; to have succession by the corporate name for twenty years; to sue and be sued; to have a corporate seal; to hold, purchase, and dispose of such real and personal property as the nature of their business may require; to have proper and suitable officers; to borrow money and mortgage or pledge their property to secure the same, but not to amount exceeding their capital stock, nor at a greater rate of interest than 8 per cent; and generally to carry on the business or accomplish the purposes expressed in the declaration for incorporation. Companies thus organized for the purpose of buying, selling, or improving lands, have, in addition, power to invest their money in any other property or assets, in enterprises they deem calculated to advance their interests, or to loan money or property to individuals or corporations buying, leasing, or making improvements on or near their lands, and to receive certificates of stock, notes, bonds, mortgages, or other security for such investments or loans. The charters of such corporations may be renewed by the consent of a majority in value of their stockholders duly expressed. Savings and trust companies by name have been incorporated by special acts, with very ample powers and franchises, which are contained and set out in each particular charter, and often peculiar thereto. Among the powers thus conferred are those of saving banks, trustees, guardians, administrators, making bonds as surety, and many others.

Warehouse Receipts. For property actually delivered to him, a warehouseman may give receipts, which, unless plainly marked "not negotiable," may be transferred by endorsement thereof; and the transferee must be taken and deemed to be the owner thereof, so as to make a valid pledge, lien, or transfer of the same; subject, however, to the lien of landlords for rent or advances, and other liens thereon created by contract, of which notice has been given duly by registration. Unless marked plainly "not negotiable," the warehouseman is forbidden to deliver things or property therein specified, except upon the delivery and cancellation, wholly or in part, of such receipt.

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 by testator 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 ALASKA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Acknowledgments. (See Deeds.)

Actions. The distinction between actions at law and suits in equity and all forms of pleading heretofore existing in actions at law and suits in equity are abolished, and there is but one form of action, denominated a civil action, for the enforcement or protection of private rights and the redress or prevention of private wrongs. Every action must be prosecuted in the name of the real party in interest, except that an administrator or executor, a 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; but the assignment of a thing in action not arising out of contract is not authorized.

Affidavits. An affidavit or deposition taken out of Alaska, otherwise than upon commission, must be authenticated as follows: 1. It must be certified by a commissioner appointed by the governor of Alaska to take affidavits and depositions in the State, territory, district, or country where taken; or, 2, it must be certified by a judge of a court of record having a clerk and a seal to have been taken and subscribed before him at a 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 must be certified by the clerk of the court, under the seal thereof. In all affidavits or depositions witness should speak in the first person.

Aliens. Any alien who is a *bona fide* resident of the United States, or who has declared his intention to become a citizen, or whose rights are secured by treaty, may acquire and hold lands upon the same terms as a citizen. Any alien may acquire lands by inheritance or in the ordinary course of justice in the collection of debts, and may acquire and enforce liens upon lands, but such lands must be sold within ten years. Any alien may also acquire and hold lots or parcels of land in any incorporated or platted city, town, or village, or in any mine or mining claim, but is not authorized to acquire title from the United States to any of the public lands.

Arrest. The defendant may be arrested in the following civil actions: 1. For the recovery of money or damages when the defendant is about to remove from the district with intent to defraud his creditors; for an injury to person; or for willfully injuring or wrongfully taking, detaining, or converting property. 2. For a fine or penalty; or for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any agent, broker, or other person in a fiduciary capacity; or for any misconduct or neglect in office or in a professional employment. 3. To recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of, so that it can not be found or taken by the marshal, and with 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 fraud in contracting a 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. 5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Attachment. The plaintiff, at the time of issuing the summons or afterwards, may have the property of defendant attached in an action upon a contract, express or implied, for the direct payment of money, and, 1, which is not secured by mortgage, lien, or pledge upon real or personal property, or if so secured, when the security has been rendered nugatory by the act of the defendant; or, 2, against a non-resident defendant. The writ issues whenever the plaintiff, or anyone in his behalf, files an affidavit showing that defendant is indebted to plaintiff (specifying the amount of indebtedness over and above all legal set-offs or counter-claims) upon a contract, express or implied, for the direct payment of money; that the payment has not been secured by mortgage, lien, or pledge upon real or personal property; and that the sum for which attachment is asked is an actual, *bona fide*, existing debt due and owing from plaintiff to defendant; and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor of the defendant. Plaintiff must also file an undertaking, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which he demands judgment, conditioned that plaintiff will pay all costs adjudged and all damages sustained by reason of the attachment if the same be wrongful or without sufficient cause, not exceeding the amount specified.

Chattel Mortgages. Any interest in personal property, capable of being transferred, may be mortgaged; but the mortgage is void as against creditors and subsequent purchasers and incumbrancers in good faith and for value, unless possession of the property be delivered to and retained by the mortgagee or the mortgage provide that the property may remain in the possession of the mortgagor and be accompanied by the affidavit of all the parties thereto that the same is made in good faith to secure the amount named therein, and without design to hinder, delay, or defraud creditors, and be acknowledged and filed. The mortgage must be acknowledged by the mortgagor as a conveyance of real property and be filed in the office of the recorder of the precinct where the mortgagor resides and of the precinct where the property is. Within thirty days next preceding the expiration of one year from the filing, a true copy of the mortgage, with a verified statement of the interest of the mortgagee in the property at the time the same is renewed, must be filed in the office where the original was filed, and the lien is thereby extended another year. Chattel mortgages are foreclosed in the same manner as mortgages and liens upon real property, but a clause may be inserted in a mortgage authorizing the marshal to execute the power of sale therein granted to the mortgagee.

Corporations. Domestic Corporations. Three or more adult persons, *bona fide* residents of the district, may form a corporation for the following purposes: To construct, own, and operate railroads, and tramways, street railways, wagon roads, flumes, and telegraph and telephone lines in Alaska; to acquire, hold, and operate mines in Alaska; to carry on the fishing industry in Alaska and the waters adjacent and contiguous thereto; to construct and operate smelters, electric and other power and lighting plants, docks, wharves, elevators,

warehouses, and hotels in Alaska; and to carry on trade, transportation, agriculture, lumbering, and manufacturing in Alaska.

Foreign Corporations. Every corporation or joint stock company organized under the laws of the United States or any state or territory shall, before doing business within the district, file in the office of the secretary of the district and in the office of the clerk of the district court for the division wherein it intends to carry on business a duly authenticated copy of its charter or articles of incorporation, and also a statement verified by the oath of its president and secretary and attested by a majority of its board of directors.

Deeds. A conveyance of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, and acknowledged or proved, and recorded, without any other act or ceremony. A quit-claim deed passes all the estate which the grantor could convey by deed of bargain and sale. No covenants are implied in any conveyance. The term "heirs," or other words of inheritance, are not necessary to create or convey an estate in fee simple. Husband and wife may, by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed if she were unmarried. A married woman residing in the district, joining her husband in a deed, must acknowledge that she executed such deed freely and voluntarily. When a married woman not residing in the district joins her husband in conveying real estate situate in the district, the conveyance has the same effect as if she were sole, and the acknowledgment or proof of the execution may be made the same as if she were sole. Within the district deeds must be executed in the presence of two witnesses, who shall subscribe their names as such; and the person executing a deed may acknowledge the execution before a judge, clerk of the district court, notary public, or commissioner within the district, and the officer taking the acknowledgment must indorse thereon a certificate of acknowledgment and the true date of making the same under his hand.

Depositions. The testimony of a witness, *in the district*, may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant, and in a special proceeding after a question of fact has arisen, when, 1, the witness is a party to the action or proceeding, by the opposite party; 2, the witness's residence is more than one hundred miles from the place of trial; 3, the witness is about to go more than one hundred miles beyond the place of trial; 4, the witness is too infirm to attend the trial; or, 5, the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

The testimony of a witness, *out of the district*, may be taken by deposition, by commission issued, upon five days' notice to the other party, by the clerk of the court, or justice of the peace in a cause in his own court, 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 the commission.

The amount of the commissioner's fees should be indorsed upon the deposition.

Descent and Distribution. The real property of an intestate descends as follows: 1. In equal shares to his or her children and to the issue of any deceased child by right of representation; and if there be no child of intestate living at the time of his or her death, to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they take equally; otherwise, by representation. 2. If intestate leave no lineal descendants, to his wife; or if intestate be a married woman, to her husband; and if intestate leave no wife nor husband, to his or her father. 3. If intestate leave no lineal descendants, neither husband nor wife, nor father, such real property descends in equal shares to his brothers and sisters, and to the issue of any deceased brother or sister by right of representation; but if intestate leave a mother, she takes an equal share with such brothers and sisters. 4. If intestate leave no lineal descendants, neither husband nor wife, nor father, brother, nor sister, such real property descends to his mother, to the exclusion of the issue of deceased brothers and sisters. 5. If intestate leave no lineal descendants, neither husband nor wife, nor father, mother, brother, nor sister, such real property descends 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 are preferred. 6. If intestate leave one or more children, and the issue of one or more deceased children, and any of such surviving children die under age without having been married, all such real property that came to such deceased child by inheritance from such intestate descends in equal shares to the other children of such intestate and to the issue of any other children who have died, by right of representation. But if all the other children of intestate be dead, and any of them have left issue, such real property so inherited by such deceased child descends to all the issue of such other children of the intestate in equal shares, if they are in the same degree of kindred to such deceased child; otherwise, they take by right of representation. 7. If intestate leave no lineal descendants or kindred, such real property escheats to the United States.

Divorce. A marriage prohibited by law on account of consanguinity of parties, or on account of either having a former husband or wife then living, is, if solemnized within the District, absolutely void, and for any of such causes may be declared void from the beginning, at the action of either party.

The dissolution of the marriage contract may be declared at the action of the injured party for either of the following causes: 1. Impotency existing at the time of the marriage and continuing to the commencement of the action. 2. Adultery. 3. Conviction of felony. 4. Willful desertion for the period of two years. 5. Cruel and inhuman treatment calculated to impair health or endanger life. 6. Habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action. Plaintiff must be an inhabitant of the district at the commencement of the action and for two years prior thereto. Neither party may marry a third person until the action is determined upon appeal or the time for taking an appeal has expired.

Dower and Curtesy. The widow of every deceased person is entitled to dower, or the use during her natural life of one-third part in value of all the lands whereof her husband died seized of an estate of inheritance.

When any man and his wife are seized in her right of any estate of inheritance in lands, the husband, on the death of his wife, holds the lands for his life as tenant thereof by the curtesy, although such husband and wife may not have had issue born alive.

Evidence. No person may be excluded as a witness on account of being a party or interested in the event of an action or proceedings having been convicted of a crime, or his opinions on matters of religious belief. Persons of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the fact

respecting which they are examined or of relating them truly may not be witnesses. An attorney may not, without his client's consent, be examined as to communications made by his client to him or his advice thereon. A priest may not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs. A physician or surgeon may not, against the objection of his patient, be examined, in a civil action, or proceeding, as to information acquired in attending the patient which was necessary to enable him to prescribe or act.

Executions. (See *Judgment and Execution.*)

Executors and Administrators. When a will is proven letters testamentary are issued to the persons therein named as executors, or to such of them as give notice of their acceptance of the trust and are qualified. Administration is granted 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; or 3. to any other person competent and qualified whom the court may select. If deceased were a married woman administration shall in any case be granted to the husband, if qualified, and he apply therefor. Claims are paid in the following order: 1. Funeral charges. 2. Taxes due the United States. 3. Expenses of last sickness. 4. All other taxes. 5. Debts preferred by the laws of the United States. 6. Debts which at the death of the deceased were a lien upon his property, in the order of the priority of the liens. 7. Debts due for wages earned within ninety days immediately preceding death of decedent. 8. All other claims.

Exemptions. 1. Earnings of judgment debtor, for personal services rendered within sixty days next preceding the levy of execution or attachment, when necessary for the use of his family supported in whole or in part by his labor. 2. Books, pictures, and musical instruments owned by any person, to the value of seventy-five dollars. 3. Necessary wearing apparel owned by any person for the use of himself or family, but watches or jewelry exceeding one hundred dollars in value are not exempt. 4. The tools, implements, apparatus, team, vehicle, harness, or library necessary to enable any person to carry on the trade, occupation, or profession by which such person habitually earns his living, to the value of five hundred dollars; also sufficient quantity of food to support such team, if any, for six months; the word "team" being construed to include not more than one yoke of oxen, or a span of horses or mules, or two reindeer, or six dogs. 5. The following property, if owned by the head of a family and in actual use or kept for use by and for his family, or when being removed from one habitation to another on a change of residence: Ten sheep, with one year's fleece or the yarn or cloth manufactured therefrom; two cows and five swine; household goods, furniture, and utensils to the value of three hundred dollars; also food sufficient to support such animals, if any, for six months, and provisions actually provided for family use and necessary for the support of such person and family for six months. 6. The seat or pew occupied by the head of a family or his family in a place of public worship. 7. All property of any public or municipal corporation. No article, or the proceeds derived from its sale or exchange, is exempt from execution on a judgment recovered for its price.

Homestead. The homestead of any family, or the proceeds thereof, is exempt. Such homestead must be the actual abode of, and owned by, such family or some member thereof, and not exceed two thousand five hundred dollars in value, nor exceed one hundred and sixty acres in extent, if not located in a town or city laid off into blocks or lots; or if located in any such town or city, one-fourth of an acre. This exemption does not apply to decrees for the foreclosure of any mortgage properly executed; but if the owners of such homestead be married, the mortgage must be executed by husband and wife.

Garnishment. (See *Attachment.*)

Interest. The legal rate of interest is eight per cent, but on contracts interest at the rate of twelve per cent may be charged by express agreement of the parties. If usurious interest has been received or collected, the party paying the same, or his legal representatives, may, by action brought within two years, recover double the amount of such interest. If it is ascertained in any action upon contract that an unauthorized rate of interest has been contracted for, judgment must be rendered against the defendant for the amount due, without interest, and against the plaintiff for costs. If the rate contracted for is eight per cent or less, the debtor may also agree to pay the taxes upon the debt, credit, or mortgage.

Judgment and Execution. A judgment is docketed immediately after entry. At any time thereafter while execution may issue a certified transcript of the docket may be filed in the office of the recorder of any recording district, and from the date of docketing a judgment or transcript thereof the judgment is a lien upon all the real property of the defendant within the recording district or districts where docketed, or which he may afterwards acquire therein during the time an execution may issue. If no execution issues within ten years the lien expires, but is renewed if afterwards leave is given to issue execution and a transcript of the docket of the order docketed with the recorder.

Execution may issue at any time within five years from the entry of the judgment, and thereafter on order of the court made on motion of the party in whose favor the judgment was given. Such motion must be subscribed and verified as a complaint, and summons must be served upon the judgment debtor or his representatives, to which he or they may demur or answer. The order made must be docketed as a judgment. Execution may be against the property of the judgment debtor, his person, or for the delivery of the possession of real or personal property or such delivery with damages. Execution from the district court is returnable within sixty days; from the commissioner's court within thirty days. Until a levy property is not affected by the execution.

Licenses. (See *Taxes.*)

Liens. Every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other person performing labor upon or furnishing material of any kind to be used in the construction, development, alteration, or repair, either in whole or in part, of any building, wharf, bridge, flume, ditch, mine, tunnel, fence, machinery, or aqueduct, or any structure or superstructure, has a lien upon the same for the work or labor done or material furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, sub-contractor, architect, builder, or other person having charge of the work, in whole or in part, is, for this purpose, deemed the agent of the owner.

Limitations. Civil actions must be commenced within the following periods after the cause of action accrued: Within ten years—action for the recovery of real property, or the possession thereof; upon a judgment or decree of any court of the United States, or of any State or Territory within the United States; upon a sealed instrument.

Within six years—action upon a contract or liability, express or implied, except judgment or sealed instrument; upon a liability created by statute, other than a penalty or forfeiture; for waste or trespass upon real property; for taking, detaining, or injuring personal property, including an action for the specific recovery thereof. Within three years—action against a marshal, coroner, or constable, upon a liability incurred by the doing of an act in his official capacity or in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon execution, but not an action for an escape; action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the United States, except the statute prescribe a different limitation. Within two years—action for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract; upon a statute for a forfeiture of penalty to the United States. Within one year—action against the marshal or other officer for the escape of a person arrested or imprisoned on civil process; upon a statute for the penalty given in whole or in part to the person who will prosecute, but if not commenced within one year by private party may be within two years by the United States.

Married Women. The property and pecuniary rights of every married woman at the time of marriage, or afterwards acquired by gift, devise, or inheritance, or by her own labor, are not subject to the debts or contracts of her husband, and she may manage, sell, convey, or devise the same by will to the same extent and in the same manner that her husband can property belonging to him. For civil injuries damages may be recovered from a married woman alone, and her husband is not responsible therefor. 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. All laws which impose or recognize civil disabilities upon a wife which do not exist as to the husband are repealed. Wife may record list of her property and such list is *prima facie* evidence of her separate ownership, and property not so registered is deemed *prima facie* the property of the husband. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage. Husband and wife may make conveyances and transfers and create liens between themselves, and either may constitute the other his or her attorney in fact. A woman becomes of age at twenty-one or upon being married according to law.

Mortgages. Mortgages are executed, acknowledged, and recorded in the same manner as deeds. No covenant is implied for the payment of the sum intended to be secured. Record of assignment is not notice to the mortgagor, his heirs, or personal representatives. Mortgage may be discharged by entry in margin of record signed by mortgagee or his personal representative or assignee and witnessed by the commissioner or deputy, or by certificate executed and acknowledged as other conveyances. Foreclosure is by action of an equitable nature in which a deficiency judgment may be had.

Notes and Bills of Exchange. On all bills of exchange and all negotiable promissory notes, orders, and drafts payable at a future day certain within the district, grace is allowed; but grace is not allowed on bills of exchange, notes, or drafts, payable at sight or on demand.

Records. An unrecorded conveyance of real property is void as against any subsequent innocent purchaser in good faith and for a valuable consideration whose conveyance is first duly recorded. A commissioner is ex-officio recorder of a recording district, the boundaries of which are fixed by the court. Conveyances of lands not in any recording district are recorded with the clerk of that division of the district court within the limits of which such lands are situated.

Replevin. The plaintiff, at any time after the commencement of an action to recover the possession of personal property and before judgment, may claim the immediate delivery of such property upon filing an affidavit showing that he is the owner of the same or entitled to the possession thereof; that the property is unlawfully detained by defendant; the alleged cause of detention; 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 exempt; and the actual value of the property.

Service. (See *Actions.*)

Supplementary Proceedings. (See *Judgment and Execution.*)

Taxes. Every person or corporation prosecuting or attempting to prosecute any of the following lines of business within the district must first apply for and obtain license so to do from the district court or a subdivision thereof, and pay per annum for such license for the respective lines of trade and business as follows: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish oil works, ten cents per barrel; fertilizer works, twenty cents per ton; freight and passenger transportation lines, propelled by mechanical power on inland waters and ocean and coastwise vessels doing local business for hire, one dollar per ton on net tonnage; railroads, one hundred dollars per mile; tramways, ten dollars per mile; saw-mills, ten cents per thousand feet on lumber sawed; quartz mills, three dollars per stamp; mercantile establishments and manufactories doing a business of under four thousand dollars per annum, ten dollars, and in proportion to the amount of business done to five hundred dollars for establishments doing a business of one hundred thousand dollars per annum; in other lines of trade and business the amount is fixed for each and ranges from ten to five hundred dollars.

Wills. Every person of twenty-one years of age, of sound mind, may dispose of all his or her property by will, saving a widow's dower and a husband's rights as tenant by the curtesy. Will must be in writing, signed by the testator, or under his direction, in his presence, and attested by two or more competent witnesses subscribing their names in the presence of the testator. A will by an unmarried person is revoked by his subsequent marriage. Children or descendants of children not named or provided for in the will take as if testator had died intestate. A mariner at sea or soldier in military service may dispose of his personal property as at common law. Proof of nuncupative will must be made within six months, and the words of their substance reduced to writing within thirty days after they are spoken. A person owning property in, but not an inhabitant of, the district may devise or bequeath the same according to the laws of his domicile. If such will be probated without the district, copies of the will and the probate thereof, certified by the clerk of the court in which it was probated, with the seal of the court affixed thereto, if there be a seal, together with a certificate of the chief judge or presiding magistrate, that the certificate is in due form, and made by the clerk or other person having the legal custody of the record, may be recorded, admitted in evidence, or contested and annulled as if executed and proved within the district.

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 this Territory is "Revised Statutes, 1904 and Session Laws, 1903 and 1905" from which this abstract is made. 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 6 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 where made, a consul-general, consul, vice-consul, or commercial agent of United States where made; a notary public—are taken personally or by proof. (See *form*.) All instruments affecting real or personal property must be acknowledged before recording. (See *Notary*.) Acknowledgments of married women, taken in the same form as if she were *sole*. No separate examination required. Certificate for persons must state "that instrument was executed for the consideration and purposes therein expressed," and officer taking same must sign certificate and attach seal of office. None shall be taken unless officer knows, or has satisfactory evidence on oath or affirmation of a credible witness, which shall be noted in the certificate. Where acknowledgment is made by officer of corporation, the certificate must state that such person as such officer (giving his name) "acknowledged the execution of the instrument as the free act and deed of such corporation, and was by each of them voluntarily executed." If instrument unacknowledged, must be executed according to common law except as to scrolls and seals. Certificate must show date of expiration of officer's commission. When certificate of acknowledgment defective, action lies to obtain decree correcting same. (See *Forms*.)

Actions. All actions shall be commenced by the filing with the clerk of the District Court 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 may be sworn to, answer under oath may be waived.

Administration of Estates. No public administrator. 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 brothers. 5. To the sisters. 6. To the grandchildren. 7. To the next of kin entitled to share in the distribution. 8. To the creditors. 9. 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. Alien corporations or persons, unless rights are secured by treaty, can not hold land in the Territory, except where titles are acquired prior to March 3, 1887; may acquire lands by inheritance, or in the ordinary course of justice in the collection of debts; may acquire liens on real estate; may lend money and secure the same on real estate; but title so acquired must be sold within ten years; may acquire absolute title and hold and convey the same at pleasure in patented mines; and may hold all the stock of domestic corporations owning possessory rights to unpatented mines.

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.

Attachment. Writ will issue under following conditions. The clerk of the court or justice of the peace must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, showing: 1. That the defendant is indebted to the plaintiff upon a contract, express or implied, for the direct payment of money, and that such contract was made or is payable in this Territory, and that the payment of the same has not been fully secured by mortgage, lien, or pledge as hereinbefore provided, or if originally so secured, that such security has, without any act of the plaintiff or the person to whom the security was given, become valueless, and shall specify the character of the indebtedness, that the same is due to the plaintiff over and above all legal set-offs or counter-claims, and that demand has been made for the payment of the amount due; or, 2. That the defendant is indebted to the plaintiff, stating the amount and character of the debt; that the same is due and payable over and above all legal set-offs and counter-claims, and that the defendant is a non-resident of this Territory or is a foreign corporation doing business in this Territory; or, 3. That an action is pending between the parties, and that the defendant is about to remove his property beyond the jurisdiction of the Court to avoid payment of the judgment; and, 4. That the attachment is not sought for a wrongful or malicious purpose, and that the action is not prosecuted to hinder or delay any creditor of the defendant. 5. No such attachment shall issue until the suit has been duly instituted, but it may be issued in a proper case either at the commencement of the suit or at any time during its progress. 6. The writ of attachment above provided for may issue, although the plaintiff's debts or demand be not due, and the same proceeding shall be had thereon as in other cases, except that no final judgment shall be rendered against the defendant until such debt or demand shall become due. In order to obtain an attachment for a debt on demand *not due* it shall be necessary for the plaintiff, or some one in his behalf, to make an affidavit to be filed with the clerk or justice of the peace, as the case may be, showing:—*a.* That the defendant is indebted to the plaintiff upon a contract, express or implied, for the direct payment of the money, stating the amount and that the debt is not due; that such contract was made or is payable in this Territory, and that the payment of the same has not been secured by mortgage, pledge, or lien as hereinbefore provided, and shall state the character of the debt sued for and that there are no legal set-offs or counter-claims against the same. *b.* That defendant is about to remove permanently out of the Territory and has refused to secure the debt; or, *c.* That he has secreted his property for the purpose of defrauding his creditors; or, *d.* That he is about to remove his property, out of the Territory, without leaving sufficient remaining for the payment of his debts; or, *e.* That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or, *f.* That he is about to dispose of his property with intent to defraud his creditors; and, *g.* That the attachment is not sued out for the purpose of injuring or harassing the defendant; and, *h.* That the plaintiff will probably lose his debt unless such attachment is issued. 7. In case of an attachment for a debt not due, the facts set forth in the affidavit for attachment may be traversed by the defendant, and the issue so formed shall be tried before the court or a jury, as other cases. Writ may issue at any time before judgment after the filing of complaint, upon plaintiff or some one in his behalf filing the affidavit, and upon 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. 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 \$100,000; 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. The negotiable instrument code adopted by the American Bar Association is in force. 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. (See *Guaranty Companies*.)

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

mortgage to immediate possession of it, and such removal, transfer, or sale, or subsequent encumbrance is felony. 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 which must be served on owner. Upon stock of goods, wares, and merchandise with continued possession in mortgagor is void. If copy is filed with Recorder original must be acknowledged, and copy certified by county recorder.

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 with county recorder.

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 except as to unpatented mines. Deed must be signed and must be acknowledged before some officer authorized to take acknowledgment, and properly certified by him to entitle same to registration. 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 and a certified copy in the office of the Territorial Auditor. 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, and a copy of the articles certified to by the County Recorder must be filed with the Territorial Auditor. Proof of Publication must be filed with Auditor. 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. Corporation must file in office of Territorial Auditor an appointment of agent who is a bona fide resident of this Territory for three years prior thereto, on whom all notices and process, including summons, may be served and constitute personal service. Charges for Incorporation—Recorder's fees, 20 cents folio. Recorder's fees, certified copy, 20 cents folio. Recorder's fees, certificate to copy, 75 cents. Territorial Auditor's fees, filing cost, copy, \$10.00. Printer's fees, per inch, publishing articles 6 days, 80 cents. Territorial Auditor's fees, filing proof, publishing, \$3.00. Territorial Auditor's fees, filing appointment of agent, \$3.00.

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 such corporation shall transact any business whatsoever in this Territory until and unless it shall have first filed authenticated copies of its articles of incorporation and appointment of an agent, 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 of the Territory for three years, 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*.)

Corporation Stock, Transfer of. Transfer of stock shall not be valid, except as between the parties thereto, until the same is regularly entered upon the books of the company, so as to show the names of the person by whom and to whom the transfer is made, the number of their designation of the shares, and the date of the transfer.

Costs. Discretionary to taxes on motion; plaintiffs who are non-residents, or those who own no property upon which execution may be levied, are required to give security for, within ten days after order made; bonds for, must authorize judgment to be entered against sureties.

Courts. Are the Supreme Court of the Territory, the district court of the five several districts, the district court for each County, the probate court for each County, justices of the peace. The supreme court consists of five justices, and its term commences second Monday in January, third Monday in May, first Monday in September. *Supreme Court:* Chief Justice, Edward F. Kent, third district, Phoenix; John H. Campbell, associate justice, Tucson; Fletcher M. Doan, associate justice second district, Tombstone; Richard E. Sloan, associate justice fourth district, Prescott; F. S. Wave, associate justice fifth district, Globe. Sessions: Second Monday in January, third Monday in May and first Monday in September. *Courts for Trial of Causes Under Laws of Congress:* At Tucson, Tombstone, Phoenix, Prescott, Globe on the dates provided for Territorial Courts below. *Terms of Territorial Courts:* First district, Pima County, Tucson, fourth Monday in April and October; Yuma County, Yuma, first Monday in April and October. Second district, Cochise County, Tombstone, fourth Monday in April and October; Santa Cruz County, Nogales, first Monday in April and October. Third district, Maricopa County, Phoenix in 1905, first Monday in April and third Monday in October, and thereafter on third Monday in April and October; Pinal County, Florence in 1905, first Monday in May and October, and thereafter on first Monday in April and October. Fourth district, Yavapai County, Prescott, first Monday in May and November; Mohave County, Kingman, first Monday in April and third Monday in October; Coconino County, Flagstaff, first Monday in April and third Monday in September; Navajo County, Holbrook, second Monday in October; Apache County, St. Johns, first Monday in October. Fifth district, Graham County, Solomonville, first Monday in April and October; Gila County, Globe, first Monday in June and fourth Monday in November. 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. (See *Jurisdiction*.)

Creditors' Bills. No statutory provisions.

Days of Grace. None

Depositions. Depositions may be taken on commission or 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. The deposition of a party to action may be taken and his statements may be controverted.

Descent and Distribution. (See *Savings Banks*.) 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. Plaintiff must be a bona fide resident of Territory for one year, and in county for six months. Grounds: Adultery; physical incompetency at marriage and continued to institution of suit; conviction of felony and sentence thereon to imprisonment in prison, providing, judgment of divorce shall not be entered until one year after conviction,

and, providing the imprisoned one has not been convicted on the testimony of the plaintiff; willful desertion of two years; extreme physical cruelty; husband's neglect to provide for wife for two years, having the ability so to do, or because he is idle or profligate; when, prior to marriage, either party shall have been convicted of a felony and the conviction is, at marriage, unknown to the other; and, in favor of husband, when wife is with child by another at marriage, and the fact is then unknown to husband. Alimony and counsel fees may be allowed *pendente lite*; corroborating evidence must be produced. Division of community property may be allowed. Divorce from bed and board may be granted.

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

Evidence. The common law rules have not been codified. Provision has been made for taking depositions by commission. Parties may be examined and the other side not concluded thereby. Statutes of other states and territories purporting to be printed under authority may be read. No one is incompetent to testify because of religious belief. Certified copies of all records in territory, counted by law, may be read. Certified copies of records of all notaries may be read. All instruments competent to be recorded may be read. Court may order inspection or copy of documents.

Executions. Upon a judgment of district court, executions may be issued to any county. Lien of dates 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. Officer levying writ of attachment or execution must notify debtor to select exempted property. (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, 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 or chattels 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. Writs of injunctions, attachments, replevin, and prohibition may be issued and served on. If a statutory holiday falls on Sunday the next day is not a holiday.

Homestead. Head of family, husband or wife, if married, may select from community or separate property, at the time of execution levy. Value must not exceed \$2,500. Deed to, must be signed by husband and wife. (See *Exemptions*.)

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 when they are seventeen years of age or over. 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*.)

Injunction is issued, where party is entitled to relief, and restraint, is required of some prejudicial act, where, pending litigation, an act is done which tends to render judgment ineffectual, and when applicant is entitled under principles of equity. Under certain conditions may be granted *ex parte* at chambers or by consent. Bond may be fixed by judge and approved by clerk.

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 6 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.

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. Laborers' and like liens are preferred to all subsequent liens, mortgages, and incumbrances, and such as lien claimant had no notice. 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 employees 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. To recover realty against person in peaceable and adverse possession under color of title, three years; against such possession where person pays taxes and has deed recorded, five years, otherwise ten years; to recover lots in city or village against person having recorded deed, and pays taxes, five years; where party in possession claims by right of possession only, two years. Personal Actions—One year: Personal injuries, malicious prosecution, false imprisonment, libel, slander, seduction, breach of promise. Two years: Trespass to property, detention or conversion of personal property to own use, taking and carrying away goods and chattels; and injuries to person where death ensues, to accrue from date of death. Three years: Actions for debt not in writing; on stated or open accounts other than mutual between merchants or their factors and agents; all accounts, except as between merchants and factors and agents, limitations run from date of each item of delivery. Four years: For penalties or damages on any bond to convey real estate; current partners for settlement of partnership accounts; on mutual or current accounts between merchants, their factors or agents, to accrue from cessation of dealings; upon judgment or instrument without the Territory; debt evidenced by writing within the Territory; bonds of executors, administrators, or guardian, after death, removal, etc.; specific performance; to contest will after discovery of fraud; and where no provision is otherwise made. Five years: On domestic judgment where execution has been issued within one year after rendition.

Mines unpatented are real estate for the purpose of inheritance and conveyance. Location requires seven monuments, three at each end, and one at discovery, in which notice is to be placed on discovery; title work consisting of a shaft 4 x 6 x 10 feet deep, or its equivalent in an open cut so that removal in place is discovered 10 feet from the surface must be done and notice recorded within three months, and annual assessment work amounting to \$100, maintained each year thereafter, until patent is ordered.

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, Redemption*.)

Notary Public. In all certificates and acknowledgments the date of expiration of commission must be stated, as "commission expires —" No certificate of holding office etc., is required when notary acts in foreign state or country.

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

Partnerships using fictitious name may 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.*)

Records. The district and probate courts of each county are courts of record. The recorder's office in each county relates to titles of real estate and personal property, and probably record instrument therein is notice. The minutes of the Sanitary Live Stock Board is notice to all brands and marks of live stock.

Redemptions. From tax sales, one year. From sheriff or judicial sales, six months, and if debtors or successors on interest any lien holder may redeem within three months thereafter by serving and filing statutory notice. The same rule applies to foreclosure of mortgages and trust deeds whether by court or under powers of sale.

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.

Service. All summons upon persons shall be personal, or by leaving a copy with copy of complaint at the usual place, and residence of defendant, with a member of his family over the age of sixteen years; against incorporated city, or town, or village; upon mayor, clerk, secretary, or treasurer; against incorporation or joint stock association, upon president, secretary, or treasurer, director or local agent representing company, or by leaving a copy of summons and complaint at the principal office during office hours; upon any railroad, telegraph, or express company, or any agent of such company who resides in or may be found in the county where suit is brought; upon domestic corporation by serving on statutory resident agent, and where there is no officer upon whom service can be made in the Territory, service may be had by delivering duplicate copies of summons and complaint to the secretary of the Territory, and upon foreign corporation by delivery to statutory agent.

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 levied 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. Within 60 days after delinquency action may be commenced in district court to foreclose delinquent real estate tax liens, and property sold as under execution. Personal property tax is collected by distress warrant. Real estate sold for taxes may be redeemed within one year after sale. Taxes after delinquency draw interest at one per cent. per month after action commenced to foreclose tax lien penalty of twenty-five per cent. is added.

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 testator 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. Contests of can not be initiated after one year from date of probating.

SYNOPSIS OF THE LAWS OF ARKANSAS

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MESSRS. ROSE, HEMINGWAY, CANTRELL & LOUGHBOROUGH, 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 affidavit 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. Officers and employes of banks are criminally liable for making false reports, and for receiving deposits knowing bank to be insolvent.

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. (See *Warehouse Receipts and Bills of Lading*.)

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 two witnesses, 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 clerk of the county in which the corporation is to transact business and then with the clerk's endorsement in the office of the secretary of State. 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 are 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, a certificate showing the proportion of their capital stock invested in the State, and a certificate appointing an agent for service and naming a place of business within its limits.

Costs. In cases at law the winning party recovers his costs; in equity costs may be imposed at the discretion of the court.

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.

Creditors' Bills may be brought without first having obtained judgment at law. The insolvency of the defendant and want of remedy at law may be shown by parol evidence.

Days of Grace are controlled by the law merchant.

Deeds. (See *Acknowledgments and Conveyances*.)

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.

Evidence. (See *Depositions*.) The courts take judicial notice of the laws of the other States. Certified copies of official records and of recorded deeds and mortgages are admissible. If the execution of an instrument is denied under oath the court may require production of the original. Books of account of deceased merchants whose authenticity is verified by the executor or administrator, are admissible, it being first shown that the deceased had the reputation of keeping correct books. The courts may compel the production of books, papers, and documents of all kinds. In civil actions parties and witnesses having an interest may testify; but in actions by or against executors, administrators, or guardians, neither party can testify against the other as to any transactions or statements of the testator, intestate, or ward unless called to testify by the opposite party. The following persons are incompetent to testify: Persons convicted of infamous crimes, infants under ten years, persons of un-sound mind. Husbands and wives can testify for each other only where one acts as the agent for the other; and in respect of the agency. Confidential communications made to attorneys, ministers of the gospel, priests, physicians, and surgeons are inviolable. (See *Accounts*.)

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 \$300 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.

Foreign Corporations shall, before doing business in the State, by its president file in the office of the secretary of State a certificate under the seal of the company naming an agent, who shall be a citizen of this State, upon whom service of process can be made. The certificate shall state the principal place of business of the corporation; and service on the agent shall bind it. The corporation must also file a copy of its charter in the office of the secretary of State, and in the office of the county where it opens an office, and must pay same fees as are required of home corporations. These requirements do not apply to railroad or telegraph companies that had built lines in the State prior to Feb. 16 1899. If any corporation fails to appoint an agent service of process on the auditor of State shall bind it. Within six months after commencing business in the State each foreign corporation must file in said offices a statement showing the proportional part of its capital stock invested in this State and in the county. No foreign corporation can sue on any contract made in this State until these provisions are complied with.

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*.)

Injunctions may be issued by circuit judges, chancellors, or the judge of any court in which suit is brought. The person applying for the injunction must give bond as the court or judge may direct.

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.

Jurisdiction. The supreme court has appellate jurisdiction from the circuit and chancery courts in all cases, and has a general superintending control over all inferior courts; and, in aid of this jurisdiction, it may issue writs of error, supersedeas, certiorari, habeas corpus, prohibition, mandamus and quo warranto, and other remedial writs, and may hear and determine them. The circuit courts have jurisdiction in all civil and criminal cases not vested in some other court, with a superintending control and appellate jurisdiction over county, probate, corporation courts and justices of the peace. Chancery courts have jurisdiction in all cases in equity not within that of justices of the peace. County courts have original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, apprenticeship, and the internal improvement and local concerns of the county. Taxes for county purposes are levied by the quorum court, consisting of the county judge

and a majority of the justices of the county. Probate courts have jurisdiction in matters relating to the probate of wills, estates of deceased persons, executors, administrators, guardians, and persons of unsound mind. Appeals lie from the county and probate courts to the circuit courts. Justices of the peace have exclusive jurisdiction in all matters of contract where the amount in controversy does not exceed \$100, exclusive of interest, and concurrent jurisdiction with the circuit court in all matters of contract where the amount does not exceed \$300, exclusive of interest; and concurrent jurisdiction in suits for the recovery of personal property where the amount does not exceed \$300. Jurisdiction in misdemeanor cases; also as examining courts; none where title to land or possession thereof is drawn in question. Appeals from all of their judgments lie to the circuit courts. Corporation courts have the same jurisdiction as justices of the peace.

Licenses are issued to keepers of ferries, peddlers, liquor dealers, and tavern keepers.

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.

Limited Partnerships, for mercantile, mechanical, or manufacturing business may be formed by two or more persons. This does not authorize a partnership for banking purposes. Limited partnerships may consist of one or more persons to be called general partners, who shall be jointly and severally responsible as general partners now are by law, and one or more partners who shall contribute in actual cash payments a specific sum as capital, who shall be called special partners, and shall not be liable beyond the fund so contributed. The persons forming such partnership shall sign a certificate, which shall contain the name of the firm, the general nature of the business, the names of the general and special partners, distinguishing them and showing their places of residence, the amount of capital stock of each special partner and the period when the partnership is to commence, and when it shall end. This must be acknowledged before some judge or justice of the peace in this State, and duly certified and filed in the office of the clerk of the circuit court of the county in which the principal place of business shall be situated, and in other counties where the firm shall have places of business. At the time of filing the certificate an affidavit shall be filed by one of the general partners stating that the sums contributed by each of the special partners has been actually paid in cash. If the certificate is false in any respect all the partners shall be liable as general partners. The terms of the partnership must be published at least six weeks in some newspaper in the State, to be designated by the clerk of the circuit court of the county in which the certificate is recorded. Such partnerships may be continued by making and recording new certificates. The business shall be conducted under a firm in which the names of the general partners only shall be considered, without the addition of the word "Company," or any other general term. Suits may be brought by or against the general partners in the same way as if there were no special partners. No part of the sum contributed by a special partner shall be withdrawn by him; but any partner may receive lawful interest on the sum so contributed by him if such payment does not reduce the original amount of the capital, after which any profits that remain may be divided. A special partner may at any time examine into the state and progress of the business, and may advise as to its management; but shall not transact any business on account of the firm nor be employed as agent, attorney, or otherwise. If he violate these provisions he shall be deemed a general partner. The firm can only be dissolved prior to the time named in the certificate by notice of dissolution filed in the clerk's office and published four weeks in some newspaper printed in this State.

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.

Mines and Mining. Under control of commissioner of mines. All documents relating to mines must be recorded in the recorder's office of the county; and miners of the county may make by-laws regarding the time, manner, and amount of work necessary to hold claims and other rules and regulations not in conflict with law. Extensive provisions are made for the protection of the health and safety of miners. Acts 1893, p. 213. Miners have a lien on the output, machinery, and tools used to secure payment for work done. Three years' possession of a mine, with work required by law, gives possessory right.

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 appraisal, 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.

Notaries have power to administer oaths, to take acknowledgments of deeds and mortgages in or out of the State. (See *Acknowledgments*.) They may take proof or acknowledgment of all writings relating to navigation and commerce, make declarations and protests; and certify under seal the truth of all matters done by them officially; and such documents are evidence in the courts.

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*.)

Records. (See *Acknowledgments, Conveyances, Mortgages, Chattel Mortgages, and Powers of Attorney*.)

Redemption. (See *Executions*.) Lands sold under mortgages may be redeemed within twelve months. Lands sold under decrees foreclosing mortgages executed since May 8, 1899, may be redeemed within the same time. The debtor or other person desiring to redeem must pay to the clerk of the court whence the execution issued or decree of sale was made the purchase money, with 15 per cent per annum, and all lawful charges, which shall be held for the benefit of the purchaser.

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.

Revision. The constitution requires that the statutes shall be revised every ten years. The last revision was in 1894.

Service of Summons shall be by delivering to the defendants a copy of the summons or offering it to him, or by leaving a copy of the summons at the usual place of abode of the defendant with some member of his family over the age of fifteen years. If the defendant is a home corporation the service may be on the president, mayor, or chairman of the board of trustees, or in their absence, on its cashier, treasurer, secretary, clerk, or agent; and in case of railroad corporations, upon any station agent or person who has control of any of its business, either as clerk, agent, or otherwise, who has to report to the corporation employing them. If the defendant is an incorporated bank, the service may be made upon its president or cashier, if an incorporated insurance company upon the general officer of such agency. Where the defendant is a foreign corporation having an agent in this State, service may be upon him. If the defendant is an infant under fourteen years, service must be on him, his father or guardian; and if these can not be found, then upon his mother, or upon any other person having care or control of the infant, or with whom he lives. Where the infant is over fourteen years of age, service may be made on him. Constructive service may be had by publication in suits against a foreign corporation having no agent in this State, a non-resident of this State, against any defendant who has departed the State with intent to delay or defraud his creditors, or has been absent from the State four months, or has left the county of his residence to avoid the service of a summons, or conceals himself so that a summons can not be served on him. Where either of these facts appears from the affidavit of the plaintiff, a warning order is made by the court or clerk, and it is published in some newspaper having a bona fide circulation for at least four weeks.

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.

Testimony. (See *Evidence*.)

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

Trust Companies. Must have a paid up capital of \$50,000, and in counties with a population exceeding 50,000, they must have a subscribed capital of not less than \$100,000. They may exercise all the powers commonly conferred on such companies.

Warehouse Receipts and Bills of Lading shall not be given except where the commodities mentioned are received on the premises, and are under the control of the warehouseman at the time of its issuance. No warehouseman shall sell, encumber, ship, or remove any such commodity for which a receipt has been given without the written assent of the holder of the receipt. The same provisions cover owners and agents of boats and vessels. All warehouse receipts and bills of lading are made negotiable by written endorsement and delivering the same as bills of exchange and promissory notes, and no printed or written conditions, clauses, or provisions inserted in or attached to them shall in any way limit their negotiability or impair the rights and duties of the parties thereto, or persons interested therein, or such conditions shall be void. Warehouse receipts given by any warehouseman or other person for goods and other commodities deposited, and all bills of lading given by any carrier, boat, vessel, railroad, transportation, or transfer company may be transferred by endorsement and delivery; and the transferee shall be deemed to be the owner of such commodities so far as to give validity to any pledge, lien, or transfer given, made, or created thereby; and no property so stored or deposited shall be delivered except on surrender and cancellation of such receipts and bills of lading, unless such receipts and bills of lading have the words "not negotiable" plainly written or stamped on their face. Penalties are denounced against any warehouseman or other person who shall violate any of the provisions of this statute. So much of the act as forbids the delivery of property except the surrender and cancellation of the original receipt or bill of lading shall not apply to property replevined or removed by operation of law.

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. CHICKERING & GREGORY, 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 it 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 on accounts 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 date of 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 and secretary, or other person executing the same on behalf of the corporation, or proved by a subscribing witness. When an acknowledgment is properly made, but defectively certified any party interested may have an action in the Superior Court to obtain a judgment correcting the certificate. Any person interested under an instrument entitled to be proved for record may institute an action to obtain a judgment proving such instrument. The proof or acknowledgment of an instrument may be made at any place within this State before a justice or clerk of the supreme court, or a judge of the superior court and within the city, county, or township for which the officer was appointed or elected, before either: (1) A clerk of a court of record; (2) a county recorder; (3) a court commissioner; (4) a notary public; (5) a justice of the peace. The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness that the person making such acknowledgment is the individual who is described in, and who executed the instrument; or if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, 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. All civil actions, except those in which the supreme court has original jurisdiction, are commenced by filing a complaint, upon which plaintiff may, at any time within one year thereafter, have a summons issued; and if the action be brought against two or more defendants, who reside in different counties, plaintiff may have a summons issued for each of the counties at the same time. A copy of the summons must be served on each defendant. If served with the summons within the county in which the action is brought, defendant has ten days to appear and answer; if served elsewhere in the State he has thirty days. A copy of the complaint must be served with the summons. Where the person on whom service is to be made resides out of the State, or has departed from the State, or cannot after due diligence be found within the State, or conceals himself to avoid service of summons, or is a foreign corporation having no managing or business agent, cashier or secretary, within the State, and the fact appears by affidavit to the satisfaction of the court, or the judge thereof; and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom service is to be made, or that he is a necessary and proper party to the action; or when it appears by such affidavit or by the complaint on file therein, that it is an action which relates to, or the subject of which is real or personal property within this State, in which such person or foreign corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists, wholly or in part, in excluding such person or foreign corporation from any interest therein, such court or judge may make an order that the service be made by publication of summons. Provided that where service is sought to be made upon a person who cannot after due diligence be found within the State, it must first appear to the court by the affidavit aforesaid that there has not been filed, on behalf of such person in the county where such action is pending, a verified certificate of residence and place where service of summons upon him may be made; or that if such certificate was so filed and the defendant cannot be found at the place named in said certificate, which latter fact must be made to appear by the certificate of the sheriff of the county wherein said defendant in said certificate claims residence and which certificate of said sheriff must show that service of said summons was attempted upon said defendant at the place named in said certificate of residence, but that said defendant was not to be found thereat. The order must direct the publication to be made in a newspaper, to be designated, as most likely to give notice to the person to be served and for such length of time as may be deemed reasonable, at least once a week, but publication against a defendant residing out of the State, or absent therefrom, must not be less than two months. In case of publication, where the residence of a non-resident or absent defendant is known, the court or judge must direct a copy of the summons and complaint to be forthwith deposited in the postoffice, directed to the person to be served, at his place of residence. But personal service of a copy of the summons and complaint out of the State is equivalent, when publication is ordered, to publication and deposit in postoffice, and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication. The plaintiff must annex to, and publish with, the summons a notice, signed by himself or his attorney, stating the nature of the cause of action, and of the relief sought; and when the action is to recover possession of, or to enforce a lien upon, or to determine the title to, real or personal property, such fact must also be stated, and the prop-

erty described. Whenever the public records in the office of a county recorder have been lost or destroyed, in whole or in any material part, by flood fire or earthquake, any person who claims an estate of inheritance or for life in, and who is by himself or his tenant, or other person, holding under him, in the actual and peaceable possession of any real property in such county, may bring and maintain an action in rem in the superior court for the county in which such real property is situated, to establish his title to such property and to determine all adverse claims thereto. In such cases the defendants shall be described as "All persons claiming any interest in or lien upon the real property herein described or any part thereof," and summons must be issued directing the defendants to appear within three months after the first publication thereof. The publication of summons must be made for two months in a newspaper of general circulation, published in the county in which the action is brought, said paper to be designated by order of court, and to such summons a memorandum must be appended and published disclosing the names of all persons who are mentioned in the affidavit made by the plaintiff as having any lien or interest in the property. A copy of the summons and memorandum must be posted in a conspicuous place on each separate parcel of the property described in the complaint within fifteen days after the first publication of the summons. The plaintiff must declare in his affidavit all knowledge that he has with regard to all persons claiming any interest or lien in the property, giving their names and their addresses, and if said persons can be found within the state, personal service of summons and copy of complaint and affidavit must be made upon them, but if the address discloses their residence to be outside of the state, a copy of the summons, memoranda, complaint and affidavit must be mailed to such persons within fifteen days after first publication of summons, and if no address is known to the plaintiff, a copy of said papers must be mailed to the person named, addressed to the county seat of the county in which the action is brought. All such actions in rem must be commenced before July 1, 1909.

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. 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, unless he be dead or incapable or unwilling to act, in which case letters testamentary are issued to an administrator with the will annexed, appointed by said court. The person to whom the 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 party for faithful performance of his duty, unless waived by the will. In case of intestacy, letters of administration are issued to the person entitled thereto, in the following order: 1. Surviving husband or wife, or some competent person named by either. 2. Children. 3. Father or mother. 4. Brothers. 5. Sisters. 6. Grandchildren. 7. Next of kin entitled to share in the distribution of the estate. 8. Public administrator. 9. Creditors. 10. Any person legally competent. Where the person entitled to administration is a minor or incompetent, letters must be granted to his or her guardian, or to any other person entitled to letters of administration in the discretion of the court. Administrators must give bonds like executors, and must, as directed, account to the court. No person is competent or entitled to serve as administrator or administratrix who is not a bona fide resident of the State. 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. An affidavit to be used before any court, judge, or officer of this State may be taken before any officer authorized to administer oaths. An affidavit taken in another State 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 before any notary public in another State, or before any 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 clerk of a court of record having a seal, in such foreign country.

Aliens. Any alien may take, hold, and dispose of property, real or personal, within this State. Resident aliens may take in all cases by succession as citizens; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession. No person except a native-born or naturalized citizen, of the United States, shall be employed in any department of the State, city, and county, or incorporated city or town government in this State.

Appeals. An appeal may be taken to the district courts of appeal or the supreme court in the following cases, and to the court as shown below: 1. From a final judgment entered in an action, or brought into a superior court from another court. 2. From an order granting or refusing a new trial, or granting or dissolving an injunction, or refusing to grant or dissolve an injunction, or dissolving or refusing to dissolve an attachment, or changing or refusing to change the place of trial, from any special order made after final judgment, from any interlocutory judgment, order, or decree hereafter made or entered in actions to redeem real or personal property from a mortgage thereof, or lien thereon, determining such right to redeem real or personal property from a mortgage thereof, or lien thereon, determining such right to redeem, and directing an accounting, and from such interlocutory judgment in actions for partition as determines the rights and interests of the respective parties, and directs partition to be made. 3. From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship, or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof, or against or in favor of setting apart property, or making an allowance for a widow or child, or against or in favor of directing the partition sale, or conveyance of real property, or settling an account of an executor, administrator or guardian, or refusing, allowing, or directing the distribution or partition of the estate or any part thereof, or the payment

of a debt, claim or legacy, or distributive share, or confirming or refusing to confirm a report of an appraiser or appraisers setting apart a homestead. The supreme court has appellate jurisdiction in all cases in equity, except such as arise in the justices' courts; also in all cases at law which involve the title or possession of real estate or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand exclusive of interest or the value of the property in controversy amounts to \$2,000; also in all such probate matters as may be provided by law; also on questions of law alone in all criminal cases where the judgment of death has been rendered; the said court also has appellate jurisdiction in all cases, matters and proceedings pending before a district court of appeal which shall be ordered by the supreme court to be transferred to itself for hearing and decision. The district courts of appeal have appellate jurisdiction on appeal from the superior courts in all cases at law in which the demand exclusive of interest or the value of the property in controversy amounts to \$300 and does not amount to \$2,000; also in all cases of forcible entry and detainer (except such as arise in the justices' courts) in proceedings in insolvency, and in actions to prevent or abate a nuisance; in proceedings in mandamus certiorari and prohibition, usurpation of office, contesting elections and eminent domain, and in such other special proceedings as may be provided by law (excepting cases in which appellate jurisdiction is given to the supreme court); also on questions of law alone in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered. Said courts also have appellate jurisdiction in all cases, matters and proceedings pending before the supreme court which shall be ordered by the supreme court to be transferred to a district court of appeal for hearing and decision. Any party dissatisfied with a judgment rendered in a civil action in a police or justice's court may appeal therefrom to the superior court of the county, at any time within thirty days after the notice of entry of the judgment. The appeal is taken by filing a notice of appeal with the justice or judge, and serving a copy on the adverse party. The notice must state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part.

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 in fee or for life. 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, signed by the arbitrators, or a majority of them, and delivered to the parties, and when the submission is made by an order of the court, must be filed by the clerk who enters 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. In the judgment of a justice of the peace, if the defendant is liable to arrest and imprisonment thereon, that fact must be stated.

Assignments for the Benefit of Creditors. Assignments for the benefit of creditors must be written and acknowledged by the assignor or his agent authorized thereto in writing and recorded, and must be made to the sheriff of the county where the insolvent resides, or, if a non-resident, where he has property. Assignments for the benefit of creditors are void against any creditor not assenting thereto in a number of instances; for example, where they give one debt a preference over another, and where they tend to coerce any creditor to release or compromise his demand. Employees have a preferred claim, however, for a limited amount of their wages or salaries. At any time, or from time to time, after the expiration of thirty days from the first publication of notice to the 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 so secured, the security becomes valueless without any act of plaintiff. Also in an action upon a contract, express or implied, against a non-resident. Also in an action against a defendant, not residing in this State to recover a sum of money as damages arising from an injury to property in this State in consequence of negligence, fraud or other wrongful act. The clerk of the court must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, showing, (1) That the defendant is indebted to the plaintiff, specifying the amount of such indebtedness over and above all legal set-offs or counter-claims, upon a contract, express or implied, for the direct payment of money, and that such contract was made or is payable in this State, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, that such security has, without any act of plaintiff, or the person to whom the security was given, become valueless, or 2. That the defendant is a non-resident of the State, and

is indebted to plaintiff, specifying the amount of such indebtedness over and above all legal set-offs or counter-claims, upon a contract expressed or implied, or 3. That plaintiff's cause of action against defendant is one to recover a sum of money as damages (specifying the amount thereof) arising from an injury to property in this State in consequence of the negligence, fraud or other wrongful act of the defendant, and that the defendant is a non-resident of the State, and 4. That the attachment is not sought, nor is the action prosecuted, to hinder, delay, or defraud any creditor of defendant. Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, in a sum not less than \$200, and not exceeding the amount claimed by plaintiff, with sufficient sureties, to the effect that, if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages that he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto, the facts required in the above not being existent, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking. At any time after the notice of the levy thereof, the defendant may except to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before a judge, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the judge must issue an order vacating the writ of attachment.

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. Every person engaged for himself, or any person being the cashier, manager or agent of two or more persons, not incorporated, engaged in the business of banking in the State must apply for and take out a license for such privilege and shall be subject to the same requirements, limitations, liabilities, penalties and provisions as incorporated banks or banking corporations. 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. Private banks are included in the terms "banks or banking corporations," and they must report in like manner to the bank commissioners. The president of every savings bank, savings and loan society, and every other bank, depository, society, or institution in which deposits of money are made, whether any interest or dividend is paid, or agreed to be paid, thereon or not, must, within fifteen days after the first day of January of every odd-numbered year, return to the Board of Bank Commissioners a sworn statement showing the amount placed to his credit, the last known place of residence or postoffice address, and the fact of death, if known, to such president of every depositor who has not made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the interest or dividends thereon, for a period of more than ten years next preceding. Such president must give notice of these deposits in one or more newspapers published in or nearest the town, city, or county and county where such bank, society, or other institution is situated, or has its principal place of business, at least once a week for four successive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This provision does not apply to any deposit made by, or in the name of, a person known to the president to be living, and which with the accumulation thereon, is less than \$50. The board of bank commissioners must incorporate in their subsequent report each return made to them as provided in this section. Any president of either of the institutions mentioned in this section who neglects or refuses to make the sworn statement required thereby is guilty of a misdemeanor.

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 general 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. No savings bank can invest in bonds, securities or evidences of indebtedness, public or private, except United States bonds, or those of the State of California and of the counties, cities, or cities and counties or towns or school districts of the State of California, or bonds of railroad or street railroad corporations having their principal place of business in the State of California, unless such savings bank has a capital stock or reserve fund paid in of not less than \$100,000. No such corporation must loan money except on adequate security on real or personal property, and such loan must not be for a longer period than ten 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 out 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 \$500.

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. 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 consignee, 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 consignee, 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; cattle, horses, mules, swine, sheep, goats, and turkeys, 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; bees and bee-hives, apiaries and apiary stock, including frames, combs and extractors, also honey at apiaries; machinery, tanks, stills, agitators, leachers and apparatus used in producing and refining petroleum, asphaltum, fuel oils, lubricating oils and greases; the bedroom furniture, carpets, tables, stoves, ranges, cooking utensils and all furniture and equipments usually found in a hotel. Where the mortgage covers certain of the above articles, the interest on the loan may not exceed 1½ per cent per month, and no bonus is allowed. In the absence of delivery and continued change of possession, the chattel mortgage will be void as to creditors of the mortgagor unless acknowledged or proved, certified, and recorded, as required in cases of grants of real property and accompanied by affidavits of all the parties that it is made in good faith, and without any design to hinder, delay or defraud creditors.

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 death, 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 pledgee 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. All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. A contract made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it. Consent of the parties must be free, mutual, and communicated by each to the other, and is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in course of transmission to the proposer. A consideration may be executed or executory in whole or in part. The following contracts are invalid unless the same or some note or memorandum thereof is in writing, and subscribed by the party to be charged, or his agent. 1. 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, except in certain cases, the general type of which is where the party making the promise has assumed the obligation as a principal obligation. 3. An agreement made upon consideration of marriage other than mutual promise to marry. 4. An agreement for the sale of goods, chattels, or things in action, at a price not less than \$500, unless the buyer accepts or receives part of such goods or chattels, or the evidences, or some of them, of such things in action, or pays at the time some part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale book at the time of the sale of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account the sale was made, is a sufficient memorandum. 5. 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 such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing, subscribed by the party sought to be charged. 6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission. 7. An agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath any property, or to make any provision for any person by will. The execution of a contract in writing, whether the law requires it to be written or not, supercedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

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 encumbrances, 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. Any person in whom the title of real estate is vested, who shall afterwards, from any cause, have his or her name changed, must in any conveyance of real estate so held, set forth the name in which he or she derives title to said real estate.

Corporations. Private corporations may be formed by the voluntary association of any three 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. Articles of incorporation must be prepared setting forth (1.) the name of the incorporation, (2.) the purpose for which it is formed, (3.) the place where its principal business is to be transacted, (4.) the term for which it is to exist, not exceeding fifty years, (5.) the number of its directors or trustees, which shall not be less than five, and the names and residence of those who are appointed for the first year. This does not strictly apply to lodge, hall, and benevolent corporations, or those formed for social purposes. The number of directors of corporations for profit, except those above mentioned as excepted, may be increased or diminished, by a majority of the stockholders of the corporation to any number, not less than three, who must be members of the corporation. A certificate of such number must be filed however. A copy of the articles of incorporation, certified by the secretary of State, must be filed with the county clerk of every county where the corporation purchases, acquires or locates property, within sixty days after such purchase or location. 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, 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 cor-

poration 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. Every corporation now in existence must file a copy of its articles, certified by the secretary of State, in the office of the county clerk in every county in which it holds any property, and if it acquires any property in any other county it must within ninety days thereafter file with the county clerk of that county, such certified copy of its articles of incorporation. A copy of the articles of incorporation, certified by the secretary of State, must be filed with the county clerk of every county where the corporation acquires or locates property within sixty days after such purchase or location. 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. Upon every corporation which has heretofore obtained or which shall hereafter obtain a charter or certificate of incorporation from this State, or any foreign corporation heretofore or hereafter incorporated, and doing business in this State, there shall be an annual license tax of \$90, to be paid between the first day of July and four o'clock in the afternoon of the first day of September of each year to the secretary of State, who shall pay the same into the State treasury, to be paid into the general fund of the State. Whenever articles of incorporation have been lost or destroyed by conflagration or other public calamity, a copy of the certified copy of said articles filed in the office of the secretary of State, duly certified by the secretary of State, may be filed in the office of the county clerk of the county where such articles of incorporation were on file at the time of their loss or destruction. Minutes, records, sales, assessment books, certificates of stocks or bonds or other papers or records of any corporation lost or destroyed by conflagration or other public calamity may be restored by decree of court rendered at hearing fixed upon petition therefor and held at least twenty-five days and not more than thirty days after the completion of three weeks' publication of notice in a newspaper of the county where the principal place of business of the corporation is located, personal service of the notice being made upon all persons affected residing within the State, and whose addresses are known, notice being mailed to the county seat of the county where the principal place of business is located in the case of persons affected but whose addresses are unknown. (See *Foreign Corporations*.)

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 bears 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 similar 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. Costs are allowed of course to the plaintiff upon judgment in his favor in the following cases: 1. In an action for the recovery of real property. 2. In an action to recover personal property where the value is \$300 or over, such value to be determined by the jury, court, or referee by whom the action is tried. 3. In an action for the recovery of money or damages, when the plaintiff recovers \$300 or more. 4. In a special proceeding. 5. In an action involving the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine. Costs must, of course, be allowed to the defendant upon a judgment entered in his favor in the above actions. In other actions costs may be allowed or not, and if allowed, may be apportioned between the parties, on the same or adverse sides in the discretion of the court. But no costs can be allowed in an action for the recovery of money or damages when the plaintiff recovers less than \$300, nor in an action to recover the possession of personal property, when the value is less than \$300. The prevailing party in justices' courts is entitled to costs of the action, and also of any other proceedings taken by him in aid of an execution, issued upon any judgment recovered therein. If the plaintiff in his complaint, or by notice served and filed at least ten days before the trial, offers to permit judgment to be taken against him, and in favor of any defendant for a sum specified, and the verdict is not for any greater sum, such defendant must not be allowed any costs incurred after the making of such offer, and the plaintiff may recover from such defendant such of his costs incurred after the making of the offer, as the court in its discretion, deems just. Otherwise no costs must be allowed against any defendant, and every defendant to whom damages are awarded shall recover his costs which must be deemed to be a part of the assessment in his favor.

When the plaintiff in an action or special proceeding resides out of the State, or is a foreign corporation security for the costs and charges, which may be awarded against such plaintiff, may be required by the defendant. When required proceedings must be stayed until an undertaking, executed by two or more persons is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action or special proceedings, not exceeding the sum of \$300. Additional undertaking may be required by the court upon proof that the original undertaking is insufficient.

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 annulment 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. The superior courts have appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties provided the appeal be taken within thirty days of the judgment.

District Courts of Appeal. The State is divided into three appellate districts, each of which has a court of appeals with three justices. These courts have appellate and original jurisdiction. The general line of demarcation between the supreme court and these courts is the amount of money or the value of the property involved. (See *Appeals*.)

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 commission must authorize the commissioner to administer an oath to the witness. 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. The words of the witness must be written down, in the presence of the witness, by the officer taking the deposition or by some indifferent person appointed by him. It may be taken down in short hand in which case it must be transcribed to long hand by the person who took it down. When completed, it must be carefully read to or by the witness and corrected by him in any particular, if desired, by writing or causing his corrections to be written at the bottom of the deposition, and must then be subscribed by the witness. If the parties agree in writing to any other mode, the mode so agreed upon must be followed. Special proceedings are necessary to take depositions in a country the laws of which do not permit the execution of a commission to take testimony.

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 hereof, before 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 subpoena 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 appears 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 subpoena 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 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 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 annulment 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.

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, only 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 \$300. 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 suckling calves, four hogs with their suckling 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 necessities 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. (For *Homestead Exemptions*, see *Homestead*.)

Foreign Corporations. Corporations organized under the laws of another State, Territory, or of a foreign country, which are now doing business in this State, or which shall hereafter enter this State to do business, or maintain an office in this State, shall file in the office of the secretary of state of the State of California a certified copy of their articles of incorporation, or of their charters, or of the statutes, or legislative, or executive, or governmental act creating them in cases where they are created by charters, or statutes, or legislative, or executive, or governmental acts, and a certified copy thereof, duly certified by the secretary of state of this State, in the office of the county clerk of the county where its principal place of business is located, and also where such corporation owns property. For filing and issuing certified copy as required in Section 1 of this act, corporations formed under the laws of another State, or of a territory, or of a foreign country, shall pay the same fees as are paid by corporations formed under the laws of this State. Every foreign corporation amenable to the provisions of this act which shall neglect or fail within ninety days from the date of passage of this act, to comply with the conditions of the same as herein provided, shall be subject to a fine of not less than \$500, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of this act, to report the fact to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal business, or the attorney-general of the State, or both, as soon as practicable, to institute proceedings to recover the fine herein provided for, and the amount so recovered must be paid into the State treasury to the credit of the general fund of the State; in addition to which penalty, no foreign corporation as above defined which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this State upon any demand, whether arising out of contract or tort, until it has complied with this act; provided, that any corporation described in Section 1 of this act, which is now doing business in this State, and which has complied with the act in relation to foreign corporations, approved April 1st, 1872, and an act amendatory thereof, approved March 17th, 1899, is exempted from the provisions of this act. This act shall take effect and be in force from and after the date of its passage. (February 28, 1901.) Every corporation other than those created by or under the laws of this state must, within forty days from the time it commences to do business therein, file in the office of the secretary of state a designation of some person residing within the State upon whom process issued by authority of or under any law of this State may be served. A copy of such designation, duly certified by the secretary of state, is sufficient evidence of such appointment, and of the due incorporation of such corporation. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such corporation. The \$10 annual license tax described under the title "Corporations" applies to foreign corporations as well. (See *Corporations*.)

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 though he believes it to be true, 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 in the interest of the claimant, divided or undivided, in the dwelling house in which the claimant resides, and in the land on which the same is situated, selected, if the claimant be married, from 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 separate property. The homestead can not be selected from the separate property of the wife without her consent, shown by her making or joining 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. In cases not enumerated above, in which, after a judgment has been docketed against the homestead claimant, and an execution for its enforcement levied on the homestead, it may be shown by an appraisal applied for to, and ordered by, the court, after proper proceedings, that the homestead exceeds in value the amount of homestead exemption. Then steps may be taken, if it can be done without material injury to the land, to divide the property and reach the excess. 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 nor 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 executed by the husband. 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. A husband and wife may hold property as joint tenants, tenants by entireties, tenants in common, or as community property.

Interest. Unless there is an express contract in writing fixing a different rate, interest is payable on all moneys at the rate of 7 per cent per annum after they become due on all instruments in writing, and on moneys due or lent on any settlement of accounts from the day on which the balance is ascertained. The parties may agree on any rate of interest, and may agree that if the interest on such debt is not punctually paid, it shall become part of the principal, and thereafter bear the same rate of interest as the principal debt, but interest on certain chattel mortgages is limited to 1½ per cent per month. A judgment bears 7 per cent per annum after rendition. In the computation of interest for less than a year, 360 days are deemed to constitute a year.

Judgments (see Actions). The party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement. If after the entry of judgment the issuing of execution thereon is stayed or enjoined by a judgment, or order of court, or by operation of law, the time during which it is so stayed or enjoined must be excluded from the computation of the five years within which execution may issue. All goods, chattels, moneys, and other property, or any interest therein, of the judgment debtor, not exempt by law, and all property, and rights of property seized and held under attachment in the action are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from attachment. Until a levy, property is not affected by the execution. A judgment may be revived, but it is barred by the act of limitation 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 reputed owner and his contractor, the lien extends to the entire contract price, and such contract operates as a lien in favor of all persons, except the contractor, to the extent of the whole contract price; and after all such liens are satisfied, then as a lien for any balance of the contract price in favor of the contractor. All such contracts must be in writing when the amount agreed to be paid thereunder exceeds \$1,000, and must be subscribed by the parties thereto, and the said contract, or a memorandum thereof, setting forth the names of all the parties to the contract, a description of the property to be affected thereby, together with a statement of the general character of the work to be done, the total amount to be paid thereunder, and the amounts of all partial payments, together with the time when such payments shall be due and payable, must, before the work is commenced, be filed in the office of the

county recorder of the county in which the property is situated, who shall receive \$1.00 for such filing; otherwise they are wholly void, and no recovery may be had thereon by either party thereto; and in such case the labor done and materials furnished before the filing of such contract must be deemed to have been done and furnished at the personal instance of the owner, and they have a lien for the value thereof. No part of the contract price, where the same exceeds \$1,000, must, by the terms of any such contract, be made payable, nor must the same, or any part thereof, be paid in advance of the commencement of the work, but the contract price must, by the terms of the contract, be made payable in installments at specified times after the commencement of the work, or on the completion of specified portions of the work, or on the completion of the whole work; provided that at least 25 per cent of the whole contract price must be made payable at least thirty-five days after the final completion of the contract. No payment made prior to the time when the same is due, under terms and conditions of the contract, is valid for the purpose of defeating, diminishing or discharging any lien in favor of any person, except the contractor; but as to such liens, such payment must be deemed as if not made, and shall be applicable to such liens, notwithstanding that the contractor to whom it was paid may thereafter abandon his contract, or be, or become indebted to the reputed owner in any amount for damages or otherwise for non-performance of his contract or otherwise. As to all liens except that of the contractor, the whole contract price shall be payable in money, and must not be diminished by any prior or subsequent indebtedness, off-set, or counter-claim in favor of the reputed owner and against the contractor; no alteration of any such contract shall affect any lien acquired as above set forth. In case such contracts and alterations thereof do not conform substantially to the provisions above set forth, the labor done and materials furnished by all persons except the contractor shall be deemed to have been done and furnished at the personal instance and request of the person who contracted with the contractor, and they shall have a lien for the value thereof. Any of the parties above mentioned may give written notice to the reputed owner that they have performed work or furnished materials or both, to the contractor, stating in general terms the kind of labor and materials and the name of the person to, or for whom the same was done or furnished, or both, and the amount in value. And upon the giving of such notice, it is the duty of the person who contracted with the contractor to withhold from the contractor sufficient money due or that may become due to such contractor to answer such claim, and any lien that may be filed for record, including counsel fees not exceeding \$100 in each case, and reasonable costs. A person who makes, alters or repairs any article of personal property, at the request of the owner or legal possessor thereof, or while lawfully in possession thereof, renders any service to the owner thereof, by labor or skill necessarily employed for the protection, safe keeping or carriage thereof, has a lien upon the same, dependent upon possession for his reasonable charges for work done and materials furnished and may retain possession thereof until the charges are paid. If not paid within two months after the work is done or services rendered, the person may proceed to sell the property, or so much thereof as is necessary to satisfy his demand, at public auction, ten days notice having been advertised in a newspaper of the county where the work was done, or if there be no such newspaper, by posting in three of the most public places in the county where the work was done for ten days previous to the sale. The proceeds must be applied to the discharge of the lien and the cost of keeping or selling the property; the remainder, if any, must be paid over to the owner thereof.

Every person performing work or labor in, with, about, or upon any threshing machine or engine, horse-power, wagon, or other appliance thereof, while engaged in threshing has a lien thereon to the extent of the value of his services, for ten days after ceasing work or labor; provided, within that time, an action is brought to recover the amount of the claim.

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. 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, or for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check. (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 sue or be sued, and may prosecute or defend any action or proceeding as if unmarried. 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. Except commercial or banking partnerships established and transacting business in a place without the United States, every partnership transacting business in this State under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated a certificate stating the names in full of all the members of such partnership, and their places of residence, and publish the same once a week for four successive weeks, in a newspaper published in the county if there be one, and if not, then in a newspaper published in an adjoining county. The certificate must be signed by the partners and acknowledged before some officer authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership. Where the partnership has been heretofore formed, the certificate must be filed, and the publication made, within six months after the passage of this amendment (March 16, 1901). Persons doing business as partners contrary to these provisions of this article shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this State, until they have first filed the certificate and made the publication herein required, nor can any such action be maintained by any assignee or successor in interest of such partnership, unless its transfer or assignment was by operation of law, and not the act of the partnership. A partner authorized to act in liquidation may collect, compromise, or release any debt due to the partnership, pay or compromise any claim against it, and dispose of the partnership property; but he may not, without authority in writing for that purpose, dispose of real property of the partnership except for the payment of partnership obligations.

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 in which he may have died leaving estate therein, he not being a re-ident 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. Sale of personal property, and of real property when the estate therein is less than a leasehold of two years unexpired term, are absolute. In all other cases the property is subject to redemption, as provided below. The officer must give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the county recorder of the county, which certificate must state the date of the judgment under which the sale was made and the names of the parties thereto, and contain: 1. A particular description of the real property sold. 2. The price bid for each distinct lot or parcel. 3. The whole price paid. 4. If the property is subject to redemption the certificate must so declare, and if the redemption can be effected only in a particular kind of money or currency, that fact must be stated. 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. There is no action of replevin in this State, but the action of claim and delivery substantially takes its place. 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. The rescission of a contract may also be adjudged on application of a party aggrieved: 1. Where the contract is unlawful for causes not appearing upon its face, and the parties were not equally in fault. 2. When the public interest will be prejudiced by permitting it to stand.

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. Persons desiring to form a special partnership must severally sign a certificate stating: 1. The name under which the partnership is to be conducted. 2. The general nature of the business intended to be transacted. 3. The names of all the partners, and their residences, specifying which are general and which are special partners. 4. The amount of capital which each special partner has contributed to the common stock. 5. The periods at which such partnership will begin and end. 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 violation 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 special 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 \$300, unless the buyer accept and receive part of the same, or any part of the purchase money. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or for a commission. 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.

Surety Companies. In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any provision of this code, or of any law of this State, any corporation with a paid up capital of not less than \$100,000, incorporated under the laws of this or any other State of the United States, for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, or which, by the laws of the State where it was originally incorporated has such power, and which shall have complied with all the requirements of the law of this State regulating the formation or admission of these corporations to transact business in this State, may become and shall be accepted as security, or as sole and sufficient surety upon such undertaking or bond, and such corporation surety shall be subject to all the liabilities and entitled to all the rights of natural persons' sureties; provided, that the insurance commissioner shall have the same jurisdiction and powers to examine the affairs of such corporations as he has in other cases; shall require them to file similar statements, and issue to them a similar certificate.

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. On the last Monday in 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; 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 a holographic 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 devisees 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, except that a will made in a State or country in which the testator is domiciled at the time of his death, and valid as a will under the laws of such State or country, is valid in this State as to personal property. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary or solely educational or hospital purposes cannot take under a will, unless expressly authorized by statute.

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.)

Accounts. In all actions on accounts, the cause of action is deemed to have accrued at the time of the last item proved in such account.

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 he 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 consul late. Witnesses and seals are unnecessary. When the homestead in either husband or wife's name is to be mortgaged, both must join in the conveyance, and wife must acknowledge separate and 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. If action is commenced by service of summons, complaint must be filed within ten days after issuance of summons; if commenced by filing complaint, plaintiff may have summons issued at any time within one month thereafter.

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, agent, or in any other representative name, 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 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 civil actions founded upon tort, where the finding is in favor of the plaintiff and the verdict states that defendant was guilty of fraud, malice, or willful deceit, 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 *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. Debts not due may be claimed, but if the same are not bearing interest, a suitable rebate shall be made. Interest shall be computed to the date of the assignment and not afterwards. 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 fraud 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 an order requiring creditors to show cause why such assignor should not be discharged, fixing the day for hearing and 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, 1897.)

When any business is suspended by the action of creditors, or put in the hands of a receiver or trustee, the claims of laborers and employes for wages are preferred claims. Dividends remaining unclaimed for one year after the declaration of the final dividend, may, after three months' notice, be distributed pro rata among those known creditors who have not been paid in full, and who have filed their claims for a share in the distribution of such unclaimed dividends.

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. In justice courts, the fact that the debt is for farm products, house rent, household furniture and furnishings, fuel, groceries, and provisions, clothing and wearing apparel for the debtor or his family, is additional ground for attachment. 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. No judgment can be entered until thirty days after levy of attachment. 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 or attached any interest therein, may intervene without giving bond, but the property shall not thereby be released. The aims of laborers and employes for their wages, if presented in the statutory manner, are preferred as against all creditors except mortgages under duly recorded mortgages given to secure bona fide debts existing before the labor was performed. If it is shown that the attachments levied are sufficient in amount to render the debtor insolvent, the court may allow suits to be brought and attachments to issue on contracts not yet due, that such attaching creditors may pro rate on the attached property.

Banks, Savings. Savings banks shall have a capital of not less than \$25,000, which shall be paid in cash. There must be not less than three incorporators, and the board of directors must consist of not less than three members, all of whom must be stockholders. 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. From the remainder of said deposits, temporary deposits may be made in any national bank, or in any bank of this State incorporated under the general banking laws, but must not exceed \$25,000 in any one bank; or all, or any part of said remainder may be kept on deposit, interest, or otherwise, to meet current payments. On the first Monday of January, April, July, and October of each year, a complete statement of the condition of the bank must be filed with the State treasurer, and published once a week for three successive weeks in a newspaper of the county where the bank is situated. Officers and stockholders shall be individually liable for all debts contracted while they are officers or stockholders, equally and ratably to the extent of their respective shares of stock. When a stockholder sells and transfers his stock, this liability ceases one year thereafter. A later statute provides that shareholders shall be held individually responsible for debts, contracts, and engagements of the bank in double the amount of the par value of stock owned by them respectively. Savings banks must keep on hand or subject to call, at least 20 per cent of their savings deposits. Such banks must be organized under the laws of Colorado. In case of insolvency, depositors are preferred to all other creditors of the bank. No officer shall be a borrower, or a surety for a borrower, of any of the bank's funds; nor shall the bank 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. Dividends must be declared from net earnings only.

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. No bank may take as security a lien on any part of its capital stock, nor may it hold or purchase any portion of its own stock, or of the capital stock of any other corporation, unless such purchase is necessary to prevent loss upon a debt previously contracted in good faith on security which at the time was deemed adequate, independent of any lien on such stock. Stock so purchased must not be held longer than six months, if it can be sold for what it cost, or at par. 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. To be construed with this, is the statute that officers and stockholders are individually liable for all debts contracted while they are officers or stockholders equally and ratably to the extent of their respective shares of stock. 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. Failure of the bank or banker within thirty days after receipt of such money or property is *prima facie* evidence of knowledge of the insolvency at the time of such receipt. Loans to any one 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. Banks may purchase, hold, and convey real estate, such as is necessary for immediate accommodation in the convenient transaction of its business, or such as is mortgaged to it in good faith as security for loans made or moneys due, or such as is conveyed to it in satisfaction of debts previously contracted, or such as is purchased at judgment or foreclosure sales. On the first Monday in January and July a verified statement by the president or cashier shall be filed with the State treasurer, containing a full abstract of the general accounts of the bank, and showing plainly its resources and liabilities; and the same shall also be published once a week for three successive weeks in a newspaper of the county where the bank is located. Neglect to make such statement for one month beyond the prescribed period makes the directors personally liable for all debts contracted previous to and during the period of such neglect.

Bills of Exchange. (See *Commercial Paper*.)

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

Chattel Mortgages when recorded 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. As between the parties thereto, all chattel mortgages are good until the indebtedness is paid or is barred by the statute of limitations. Mortgages of stocks of goods which reserve possession and power of sale to mortgagor, are void as against creditors and bona fide purchasers. 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. Chattel mortgages, securing the purchase price of any article may, at any time within thirty days after the maturity of the indebtedness, be extended by the mortgagee for a period not exceeding two years, and for like periods thereafter. Chattel mortgages upon household goods used by the family, when made by husband or wife residing with the other, must be made by husband and wife jointly.

Collaterals. Persons holding stocks in corporations as collateral security not personally liable as stockholders 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 order, or to bearer, 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 installment 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 if completed and negotiated without authority. 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 "Procurator" 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 may be 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 infirmity in the instrument or defect in title. To constitute notice of an infirmity 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 negating 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 negotiable by 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 primarily 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 avoids 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 original tenor. A bill does not operate as an assignment of funds, and drawee is not liable until he accepts. The drawer 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, after notice, 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, or for the honor of 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, or any interest in 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 promises to marry, and every contract for the sale of any goods, chattels, or things in action, for the price of \$50 or more, unless the buyer accepts and receives part of such goods or the evidence of some of them, or the buyer at the time pays part of purchase money. 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 on 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. (See *Sales of Personal Property*.)

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 a mortgage of a homestead. Seals and witnesses 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; Husband and Wife*.)

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. If part of the company's business is to be carried on beyond the limits of the State, that fact shall also be stated in the certificate. 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. Shares of stock shall not be less than \$1, or more than \$100 each. Notice of annual meeting must be published not less than ten days previous thereto 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. Share holders may be represented by proxy, and in case a majority of the stock is not represented, the annual meeting may be adjourned for a period not exceeding sixty 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 after proper notice. Stockholders are liable for corporate debts to the amount unpaid upon the stock, except that stockholders in banks, saving banks, trust, deposit and security associations are individually responsible for debts, contracts, and engagements of such association in double the amount of the par value of their 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. 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, together with many other particulars too numerous to set forth here. 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, and until such report shall be made and 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 affect 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 \$30, and 20 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 of entire outstanding capital stock 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. As to corporations whose charters expired prior to April 10, 1905, the call for the meeting to consider extension must be signed, and the extension authorized, by the owners of two-thirds of the capital stock issued and outstanding; and certificates of extension must be filed within four years of the expiration of the charter, and within one year from July 9, 1905; as to all other corporations said certificates must be filed within one year from the expiration of the charter. 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. Foreign corporations doing business in this State are not allowed a longer term of corporate existence than domestic corporations of like character, but must file renewal certificates and pay fees therefor in the same manner as domestic corporations, provided that such renewal must not extend the life of the foreign corporation beyond the term fixed by the State where it was organized. No foreign corporation shall have or exercise any corporate powers or hold or acquire any real or personal property franchises, rights, or privileges, or be permitted to do any business or prosecute or defend any suit in this State, unless all prescribed fees shall have been paid, and until it shall have received from the secretary of this State a certificate setting forth such full payment.

In addition to the above general laws concerning the formation of corporations, etc.—the Revenue Bill passed at the special session of the legislature and approved March 22, 1902, provides that "In addition to all other fees and taxes now provided by law, every corporation which has heretofore obtained, or which shall hereafter obtain a charter or certificate of incorporation from this State, and having a capital stock of \$25,000, or over, shall pay on or before the first day of May of each year, or at the time of obtaining such charter or certificate of incorporation, and on or before the first day of May of each year thereafter, as the case may be, an annual State corporation license tax to the auditor of the State of Colorado, as follows:

"Two cents upon each one thousand dollars of its capital stock."

It is also provided that every foreign corporation as a condition precedent to its right to do business in the State of Colorado, in substantially the manner set forth in the preceding section, shall pay a tax of four cents per thousand on its capital stock, except that foreign corporations, the par value of whose shares is less than one dollar per share shall pay a tax at the rate of two and one half cents per thousand shares—

This is known as the "License Tax."

Other provisions of this bill regarding annual reports, assessment of tangible and intangible property, etc., too voluminous to be quoted, make it advisable that care should be exercised by both domestic and foreign corporations operating in the State to acquaint themselves fully with its requirements. (See *Guaranty Companies; Trust Companies; Transfer of Corporation Stock.*)

Costs. In actions on official bonds, or bonds of executors, administrators, and guardians, and in cases where the plaintiff is a non-resident, the plaintiff, before instituting action, must file with the clerk of the court an acknowledgment by some resident of the State of security for costs. If such security is not given, a rule upon plaintiff to supply it will be made. Upon failure to comply with such rule within the time specified, suit is dismissed.

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 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.*)

Deeds. (See *Conveyances.*)

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, or, upon proper cause shown, may obtain an order of court directing it to be so taken.

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, the descendants collectively taking the share which their parents would have taken if living. 2. If there be no children nor their descendants, then to his father and mother, share and share alike; and if there be no father, then to his mother, if there be no mother, then to the father; if there be no father or 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. All posthumous children or descendants of the intestate, inherit as if born in the lifetime of the intestate; and all children of the half blood and all legally adopted children shall inherit as children of the whole blood. Alienage of descendants or divorce of husband and wife shall not affect right of children previously begotten. Illegitimate children inherit if parents subsequently intermarry. If decedent leaves a widow residing in this State she may retain as her separate property, one bed and bedding, wearing apparel of herself and family, one cow and calf, her saddle and bridle, one horse, household furniture of herself and family, in addition to the amount and species of property that by law is exempt from execution. The widow may take such property in kind or its value in money. It is not subject to the payment of the debts of the deceased.

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. Personal service upon the defendant without the State, of a copy of the summons and complaint, made by the sheriff of the county in which the defendant may be found, is sufficient to give the court jurisdiction. Service may also be made by publication in certain cases. 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, where the offense was committed within this State, plaintiff must have been a bona fide resident of the State for one year. Neither party to the divorce may marry within one year from the date of the decree.

Dower. Dower and curtesy are abolished.

Evidence. The general rule is that all persons may be witnesses. Neither parties nor persons interested in the event of an action or proceeding are excluded, nor those convicted of crime; nor is any one excluded for his opinions on matters of religious belief, but the credibility of the witness may be impeached by showing that he has been convicted of crime. A party to any civil action may be examined at the trial by the adverse party as if under cross examination, but the party calling for such examination is not concluded thereby. With some exceptions, no party or person directly interested in a suit, may testify of his own motion or in his own behalf when the opposite party sues or defends as conservator, executor, administrator, or guardian.

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 twenty 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 justices' courts. Debtor or legal representative has six months to redeem land from sale under execution. Judgment creditor has three months after expiry of said six 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 and fuel 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 \$200; 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 of head of a family, 60 per cent of wages due at the time of levy, under execution, attachment, or garnishment, is exempt, when such family resides in the State and is dependent, wholly or partially upon such earnings for support. If such wages do not exceed \$5 per week at the time of levy, they are entirely exempt. 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, shall, on conviction of either or all of said offenses, be punished by confinement in the penitentiary for a term not exceeding three years.

Frauds, Statute of. (See *Contracts.*)

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.*)

Guaranty Companies. Three or more persons may associate to carry on the business of suretyship, with authority to make loans on real estate and personal security; to receive cash deposits, or pay interest thereon; to insure the fidelity of persons in places of trust and responsibility; to receive valuables for safe-keeping; to act as agents issuing certificates for shares of stock, and for the management of sinking funds, and to be sole and sufficient security. The articles of association must be recorded in the office of the secretary of state, and a copy filed with the clerk of the county where the principal office of the corporation is located. The capital stock must be at least two hundred and fifty thousand dollars (\$250,000) and fully paid in. A sworn semi-annual statement of the company's business must be filed with the secretary of state. Under similar regulations, three or more persons may associate to insure owners of real estate and mortgages from loss by defective titles, liens and incumbrances, and to insure loans of every kind; the capital stock to be not less than \$100,000.

Holidays. The first day of January, the twelfth and twenty-second days 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, and the rents, issues, profits, and proceeds thereof, and any real, personal or mixed property which shall come to either of them by descent, devise, or bequest, or the gift of any person, including presents from the husband—for their own separate use. Such property of the wife is not liable for the husband's 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. Any chattel mortgage upon, or sale of, the household goods used by the family, and any conveyance of, or mortgage upon, a homestead, when made by husband or wife residing with the other, must be joined in by that other. A married woman may make a will, but neither husband nor wife shall devise or bequeath more than half of his or her property away from the other without the consent in writing of the other, executed after death of the testator or testatrix. It is optional with such husband or wife, after the death of the other, to accept the condition of such will, or one-half of the entire estate. Marriage revokes a will previously made. 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 upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or severally. Either husband or wife living together can separately declare property of record in the name of the other "A Homestead," by an entry of record over his or her signature,

using the one word "Homestead." Neither can mortgage or convey homestead without the signature of the other, and wife must acknowledge separate and apart from her husband. (*See Acknowledgments.*)

Injunctions. An injunction may be granted: 1. When it appears that the plaintiff is entitled to the relief demanded and that such relief consists in restraining the commission or continuance of the act complained of during the pendency of the litigation, or for a limited period or perpetually; 2. When it appears that the commission of some act would produce great or irreparable injury during the litigation; 3. When it appears that the defendant is doing, or threatens, or is about to do some act or is procuring, or suffering to be done some act in violation of plaintiff's rights respecting the subject matter of the action and tending to render the judgment ineffectual; also in such other cases as courts of equity have heretofore granted relief by injunction.

Insolvency. (*See Assignments.*)

Insurance Companies. All insurance companies must annually pay to the superintendent of insurance two per cent on the gross amount of premiums received during the year previous. No fire insurance company can do business in this State, unless it has a paid-up cash capital of at least \$300,000. A life-insurance company must have a capital of at least \$100,000. An insurance company organized for any other purpose must also have a capital of at least \$100,000. All foreign insurance companies must not only comply with the conditions of the insurance laws of this State, but must also deposit with the treasurer of this State, or a duly authorized officer of the United States, a sum not less than the capital required of like companies in this State. No fire insurance company can re-insure in any manner any risk taken by it on property in this State in any other company not authorized to transact business in this State, nor can it transfer or cede to any company not authorized to do business in this State any insurance upon property in this State. The penalty for the violation of this provision is the revocation of its authority to transact business.

Interest. The legal rate is 8 per cent, but any other rate may be fixed by agreement. The same is allowed on overdue bonds, bills, promissory notes, and judgments. County, town, and city warrants, and other like evidences or certificates of municipal indebtedness bear 6 per cent interest from presentation. 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 date upon which filed (and successive transcripts may be filed). An unsatisfied judgment should be revived every twenty years. (*See Executions.*)

Jurisdiction. (*See Courts.*)

Limitations. Actions for the recovery of land must be brought within twenty years after the accrual of the right of action. Actions for the recovery of lands actually occupied by another under a connected title deducible of record from the State or the United States, or under tax or execution or other sale ordered by court, must be brought within seven years after possession taken. If title is acquired after taking possession, statute runs from date of acquiring title. Actual possession of land for seven years under claim and color of title, with payment of all taxes for said period, constitutes the possessor owner according to the purport of his paper title. The same is true of vacant and unoccupied lands, unless some one with a better paper title pays the taxes for one or more years during such term of seven years. Actions of debt founded upon contract, express or implied; upon judgments of courts not courts of record; for arrears of rent; of assumption—or 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. (*See Accounts.*) 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, also actions for assault and battery, false imprisonment, slander and libel; also actions for penalties or forfeitures of penal statutes. 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. The constitutionality of this latter provision has, however, been attacked, and is very doubtful. (*See 117 Fed., 400.*) 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 or new promise by one co-obligor will not take the case out of the statute as to the others.

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

Mechanics' Liens. Mechanics, material-men, contractors, sub-contractors, builders, and all persons of every class performing labor upon, or furnishing materials used in the construction or repair of any building, mill, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon-road or any other structure or improvement upon land; also architects, engineers, and draftsmen, and all who have rendered their professional, skilled service upon such structure, or any part connected therewith, shall have a lien upon the property upon which they have rendered service; also those who work or furnish materials, or mining, milling, or other machinery for the working, preservation, perfecting, or development of mining claim or mineral deposit, shall have a similar lien. As between the reputed owner and a contractor, the lien extends to the entire contract price in favor of all persons performing labor or furnishing materials, and after all such liens are satisfied, there is a lien for any balance in favor of the contractor. The liens cover so much of the land whereon such buildings or improvements are placed as is necessary to the convenient use and occupation of the same. All liens relate back to the time of commencement of work on the contract between the owner and the first contractor. Liens rank in the following order: 1. Laborers or mechanics working by the day or piece, without furnishing material. 2. Sub-contractors and material-men, whose claims are either entirely or principally for materials, machinery or other fixtures. 3. All principal contractors. Intending lienors must file for record in the office of the county clerk and recorder a statement containing (1) the

name of the owner of the property, when known, (2) the name of the person claiming the lien and the name of the person who furnished the material or labor for which the lien is claimed and the name of the contractor, when the lien is claimed by a sub-contractor, (3) a sufficient description of the property to be charged (4) a statement of the total amount of the indebtedness. Copy of lien statement must be served upon owner or his agent at or before the time of filing with the clerk and recorder. Laborers are allowed one month, material-men two months, and the original contractor three months after the completion of the structure, within which to file claim of lien. Action to enforce such lien must be commenced within six months after completion of the building upon which it is claimed.

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 sales under executions. A deed of trust, pledge or mortgage, given to secure a debt, is without force or effect after six years from the maturity of the debt, and the property conveyed thereunder or transferred to secure the debt, reverts to the owner. (*See Husband and Wife.*)

Notaries. Notaries may receive proof of acknowledgment of all instruments of writing relating to commerce and navigation, of deeds and powers of attorney; they may make declarations and protests; may administer all oaths provided for by law and do all acts usually done by notaries in other States. They must keep a record of their official acts and attest them by a notarial seal.

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

Partnerships, Limited and Special. A limited partnership may consist of one or more general partners, jointly and severally liable, and one or more special partners contributing a specified amount of cash or property, who are not liable for the debts of the partnership beyond the amount so contributed. Only the general partners can bind the firm. A certificate must be signed and acknowledged by all, giving the name of the firm, the nature of the business, names and designations of the general and special partners, the place of residence of each and the principal place of business, the amount of stock contributed by each special partner, and the period of commencement and termination of the partnership. This certificate must be recorded in the office of the county clerk in each county where the partnership has a place of business, and a practically similar certificate must be published in a county newspaper for four weeks. All persons trading under the name of manager, trustee, agent, or in any other representative capacity, or using the words "& Co." or "& Company," or doing business under any name other than their personal names, must file with the county clerk an affidavit showing the real persons whom they represent. Traders in default may not bring suit upon debts due, and may be convicted and fined.

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.*)

Redemption. (*See Executions and Mortgages.*)

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.

Sales of Personal Property. Every sale or assignment of goods and chattels in the possession or under the control of the vendor is void, as against creditors or subsequent purchasers in good faith, unless accompanied by immediate delivery and followed by actual and continued change of possession. This presumption is conclusive. Sales of any portion of a stock of merchandise otherwise than in the ordinary course of trade in the regular and usual prosecution of the seller's business, or sales of entire stocks of merchandise in bulk, are prima facie evidence of fraud, and are void against creditors of sellers, unless seller and purchaser together, at least five days before sale, make a full inventory, showing the quantity, and so far as possible with reasonable diligence, the cost price to seller of the various articles included in the sale; and unless purchaser at least five days before the sale, makes full inquiry of the seller as to names and addresses of all creditors of seller, and the amount due to each, and obtains a written answer; and unless the purchaser at least five days before the sale, notifies each creditor of whom he can obtain knowledge, either personally or by registered mail, of the proposed sale, of the cost price of the goods included in it, and of the proposed selling price; and unless the purchaser retains the inventory and written answer at least six months after the sale. Answer must be made by seller to above inquiry at least five days before sale. If seller knowingly makes false or incomplete answers, he becomes guilty of a misdemeanor, punishable by fine not to exceed \$5,000, or one year in jail, or both. This act does not apply to sales by executors, administrators, receivers, assignees for creditors, or public officers conducting sales in their official capacity. (*See Husband and Wife.*)

Service. A summons is served by delivering a copy to the defendant, or by leaving it at his house, with some member of his family over the age of fifteen years, or at his usual place of business with his clerk. Service on a corporation may be made on certain designated officers, or in default of them, on an agent or stockholder; in case of a railroad company, on an officer or ticket agent. A written acknowledgment of service by a defendant is sufficient; if defendant refuses to receive copy of sum-

mons, offer of service by the officer is sufficient. Service by publication is allowed after summons has issued and a return made that the defendant, after diligent search, can not be found in cases of attachment, foreclosure, claim, and delivery, or other proceedings *in rem*; also upon domestic corporations when none of the officers or persons designated for the service of process can be found.

Suits. (See *Actions*.)

Taxes are a perpetual lien on real estate until paid, as also upon stocks of goods including new goods added thereto. Taxes may be paid in two semi-annual installments; the first half on or before the last day of February, 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 15 per cent per annum. Household goods to the value of \$200 belonging to a head of a family are exempt.

Testimony. (See *Evidence*.)

Transfer of Corporation Stock. No transfer of stock is valid for any purpose except to render the transferee liable for the debts of the company, unless it has been entered in the corporation stock book within sixty days from the date of such transfer, by an entry showing to and from whom the transfer is made. This requirement applies also to pledges of stock.

Trust Companies. Five or more persons may incorporate for the purpose of carrying on a trust, deposit, and security business. The capital stock must not be less than \$250,000 in cities of the first class, and \$50,000 in cities of the second class. The corporation may own real estate and invest its funds in bonds and mortgages.

Warehouse Receipts. Warehouse receipts are transferred by endorsement, either in blank or to the order of another, and the delivery of the receipt is a valid delivery of the property, unless the receipt has the words "not negotiable," written, printed, or stamped on its face. In case of pledge by assignment of warehouse receipts, the goods must be marked for identification, or separated from a mass of goods of the same kind, or set apart that the pledgee may hold the same against attachment in suit against pledgor.

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. For restrictions as to married persons (See *Husband and Wife*.) All wills, whether of realty or personalty, 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. Unless otherwise expressed in the will, an after born child will share in the property. Devises and bequests to witnesses are null and void, unless the will be attested by a sufficient number of witnesses exclusive of such persons. No will can be revoked otherwise than by the subsequent marriage of the testator, or by burning, tearing or obliterating the same by the testator, or in his presence and by his direction and consent, or by another will or codicil, declaring the same, duly signed and witnessed. The property devised by will must be administered by the Probate Court, and all property of non-residents must be administered to clear title to real property situated in this state. (See *Husband and Wife*; *Descents and Distributions*.)

SYNOPSIS OF THE LAWS OF CONNECTICUT

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by JAMES E. WHEELER, Attorney at Law,
New Haven.

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 (which said objection must be considered sufficient by the court), 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. Creditors not inhabitants of this State may exhibit their claims against any estate which has not been represented insolvent, at any time within one year after order of notice, and shall be entitled to payment only out of the clear estate remaining after payment of claims exhibited within time limited. 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. Administrators and executors may mortgage real estate if shown to be for benefit of the estate, after due application to, and hearing in probate court.

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. Bills of particulars should in most cases be sworn to.

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. Defendant's procedure in such case is by writ of error. Defendant has forty-eight hours from date of judgment to file bill of exceptions and procure writ of error. He must give bond to adverse party to answer for rents during time of appeal. 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. Parties to any controversy desiring to submit the same to arbitration under a rule of court, and having signed and sworn to an agreement to that effect, may, upon filing this agreement in the court having jurisdiction of the subject matter, have this agreement entered of record and obtain a rule of court that the said parties shall submit to and be finally concluded by such arbitration; or the said parties may personally appear in court and acknowledge that they have mutually decided to submit their controversy to the arbitration of certain named persons and may obtain a rule of court of similar purport; or in case of an action pending in court, if the parties thereto desire to refer it to arbitration, each may choose one arbitrator and the court appoint a third; and in either of these three cases, the award of the arbitrators being returned and accepted by the court, 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 \$100, before the general liabilities of the debtor are paid. Operation of this section suspended during continuance of U. S. Bankruptcy Act. Courts of probate in some sections of State will now accept voluntary assignments in insolvency of corporations, on ground that bankruptcy act does not provide for such cases. A creditor can, however, have such case removed to United States court.

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 from ten dollars to one hundred and forty dollars, according to amount attached. 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. (See *Exemptions*.)

Banks. (See *State Banks and Trust Cos.*)

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

Bills of Lading. Signed by master with owner's consent, renders owner as well as carrier liable to shipper. A provision in a bill of lading exempting carrier from all negligence, is void. As against a consignee, the owner and master of vessel is bound by bill of lading as to weight of cargo, and the consignee, if sued for freight, may recoup deficiency in cargo. As between shipper and ship owner, bill of lading always open to explanation, but not where consignees are deceived and shipper knew or might have known that bill was incorrect. In such case, master responsi-

ble to extent of his freight. Delivery of bill of lading held a symbolical delivery of property represented. Shipper bound by valuation in bill of lading in case of loss.

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

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

Conditional Sale. 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.

Contracts. No civil action shall be maintained upon any agreement whereby to charge any administrator or executor upon a special promise to answer for damages out of his own estate; or against any person upon any special promise to answer for the debt, default, or miscarriage of another; or upon any agreement made upon consideration of marriage; or upon any agreement for the sale of real estate, or any interest in or concerning it; or upon any agreement that is not to be performed within one year from the making thereof, unless such agreement, or some memorandum thereof, be made in writing and signed by the party to be charged therewith or his agent; but this does not apply to parol agreements for hiring or leasing real estate, or any interest therein, for one year or less, in pursuance of which the leased premises have been or shall be actually occupied by the lessee, or any person claiming under him, during any part of such term. No agreement for the sale of any personal property for fifty dollars, or upwards, shall be good unless the buyer shall accept and actually receive part of the property sold, or give something to bind the bargain, or in part payment, or unless some memorandum in writing of such agreement shall be signed by the parties to be charged therewith, or their agents. Courts of probate having jurisdiction of the settlement of the estate of any deceased person may, concurrently with the courts of equity, authorize the executor or administrator to convey the title of the deceased in any real estate to any person entitled to it, by virtue of any contract of such deceased person, and the court of probate in which the guardian of any minor has been appointed may, in like manner, order such guardian to convey the interest of his ward in any real estate which ought in equity to be conveyed to another person. Contracts for the conveyance of lands or of any interest therein, may be recorded in the records of the town in which such lands are; and such record shall be notice to all the world of the equitable interest thus created. All contracts, any part of the consideration of which has been the illegal sale of spirituous and intoxicating liquors shall be void. All wagers and all contracts and securities whereof the whole or any part of the consideration shall be money or other valuable thing won, laid or betted at any game, horse race, sport or pastime, and all contracts to repay any money knowingly lent at the time and place of such game, race, sport, or pastime, to any person so gaming, betting, or wagering, or to repay any money lent to any person who shall at such time and place, so pay, bet, or wager, shall be utterly void. 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 as against those persons only, their heirs, executors, administrators, or assigns to whom such debt or duty belongs. Any party to any such fraudulent proceeding who shall wittingly justify the same as being made in good faith and on good consideration, shall forfeit one year's value of any real estate and the whole value of any personal estate conveyed, changed, or contracted for thereby; half to the party aggrieved, who shall sue for the same, and half to the State. Contract of incapable person pending appointment of conservator or of spendthrift pending appointment of overseer, void when selectmen have filed in town clerk's office certified copy of application in case of incapable person and certified notice of proposed appointment in case of spendthrift. No person who receives a valuable consideration for a contract, express or implied, made on Sunday, shall defend any action upon such contract on the ground that it was so made until he restores such consideration. (See *Sales by Retail Dealers.*)

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 a married woman 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. Any three or more persons may associate to form a corporation for the transaction of any lawful business except that of bank, a savings bank, a trust company, a building and loan association, an insurance company, a surety and indemnity company, a steam railroad or a street railway company, a telegraph company, a gas, electric light, or water company, or any company which shall need to have the right to take and condemn lands or occupy public highways of this State. Nothing within shall be construed as prohibiting any corporation, organized under the provisions of this act, from constructing, maintaining, and operating railroads outside of this State. The persons so associating shall file a certificate of incorporation which shall set forth: (1) The name of the corporation, and every such name shall begin "The" and end with "Corporation," or "Company," or have the word "Incorporated" immediately under or after the name. (2) The name of the town in this State in which it is to be located. (3) The nature of the business to be transacted. (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 the same shall be divided and the par value of each share, which shall not be less than \$25; the amount of capital stock with which it will commence business, which shall not be less than \$1,000; and if there be more than one class of stock created, a description of the different classes with the terms

on which they are created. (5) The period, if any, limited for the duration of the corporation. This certificate shall be signed and sworn to by all of the original incorporators, and filed by them in the office of the secretary of State. A certified copy of such certificate shall be filed in the office of the town clerk in the town in which said corporation is located. Until the directors are elected the incorporators shall have charge of the formation of the corporation. Every corporation, before a certificate of incorporation is approved by the secretary of State, shall pay to the State treasurer 50 cents on every one thousand of its authorized capital stock, up to \$5,000,000; and it shall pay upon every one thousand in excess of \$5,000,000, 10 cents. The same tax on increase of capital stock. No payment less than \$25. No corporation shall commence business until the amount of capital specified in its certificate of incorporation as the amount of capital with which it will commence business has been paid in; nor until its directors and officers have been duly elected, and its by-laws adopted; nor until the directors have caused to be filed with the secretary of State a certificate signed and sworn to by a majority of them stating: (1) The amount of each class of stock subscribed for. (2) The amount paid thereon in cash. (3) The amount paid thereon in property other than cash. (4) The amount paid on each share of stock which is not paid for in full. (5) The name, residence, and address of each of the original subscribers, with the number and class of shares subscribed for by each. (6) That the directors and officers of the corporation have been duly elected and its by-laws adopted. (7) The name, residence, and post-office address of each of the officers and directors. (8) The location of its principal office in this State, with the street and number, if any there be, and the name of the agent or person in charge thereof, upon whom process against the corporation may be served. This certificate of organization need not be filed in the town clerk's office. There shall be three or more directors who shall be stockholders. They may fill any vacancy in their board for the unexpired portion of the term. The majority of the directors shall constitute a quorum. The directors shall make detailed report of the financial condition of the corporation to its stockholders at least once a year. The directors shall elect officers. No corporation shall issue any stock until the same has been subscribed and paid for in full. Receipts for partial payments on stock may be issued by the treasurer and secretary, and the persons to whom such receipts are issued shall be deemed to be stockholders. If any stock shall be paid for otherwise than in cash, the directors shall make and sign upon the company's record book a statement, showing particularly of what the property received in payment for stock subscribed consists, and that it has an actual value equal to the amount for which it is so received. The judgment of the directors as to the value of property accepted in payment of stock shall be final, but the directors concurring in the judgment of such value, in case of fraud or gross negligence in the over-valuation of such property, shall be jointly and severally liable to the amount of the difference between the actual value of any property so accepted in payment at the time of such acceptance and the amount for which it is received in payment. It shall be the duty of the secretary to keep a record of the names of the directors concurring in such judgment in value. Stockholders are liable to the full par value of their stock. No certificates for fractions of shares shall be issued. The stock of every corporation shall be personal property, transferable only on the books of the company. Every corporation shall at all times have a lien upon all of its stock owned by any person for all debts due to it from him. A corporation, except a bank, trust company, or life insurance company, may acquire, purchase, and hold its own stock. No corporation shall acquire, purchase, and hold its own stock unless to prevent loss upon a debt previously contracted, except with the approval of stockholders owning three-fourths of its entire outstanding capital stock, given at a stockholders' meeting warned and held for the purpose; and such corporation shall not vote upon shares of its own stock. No corporation shall purchase any of its own stock when it is insolvent. Directors assenting are personally liable for debts contracted, when such purchase is made by corporation when insolvent. The president and treasurer must make, sign, swear to, and file in the office of the secretary of State a certificate of the number of shares of its own stock so acquired within six months. Stockholders' meetings must be held in this State after written or printed notice given or mailed to each stockholder five days before such meeting. The president may call, upon the written request of stockholders holding one-tenth of the stock, special stockholders' meetings. Similar corporations may consolidate. Directors may make agreement of consolidation which must be approved by stockholders of each corporation by a two-thirds vote of all outstanding stock of each class. Stockholder objecting to consolidation may insist on payment to him of the value of his stock. Corporation may be wound up by voluntary agreement of all stockholders, signed and acknowledged. Such written agreement of dissolution dispenses with votes of directors and stockholders. Directors in either event are trustees to wind up business. Corporations may apply to court for limitation of time for presentation of claims. Creditors may apply for receiver during such voluntary winding up, but he must not attach or otherwise interfere with control of property by directors as such trustees. Stockholders owning one-tenth of stock may apply for receiver in case of mismanagement, fraud or when assets are in danger of waste by attachment, or when corporation has abandoned its business. The president and treasurer of every corporation having capital stock, except banks, trust companies, insurance and surety companies, railroad or street railway companies, express companies, building and loan associations, and investment companies, shall, annually, on or before the fifteenth day of February or August, make, sign and swear to and file in the office of the secretary of State a certificate setting forth as of the first day of January or July immediately preceding: (1) The name, residence and post-office address of each of its officers and directors; (2) The amount of its outstanding capital stock which has not been paid for in full, with the amount due thereon; (3) The location of its principal office in this State, with the street and number, if any there be, and the name of the agent or person in charge thereof upon whom process against the corporation may be served. The secretary shall thereupon record such certificate in a book kept by him for that purpose, and shall furnish a certified copy of such certificate to the persons filing the same, who shall forthwith cause such certified copy to be recorded in the office of the town clerk of the town in which such corporation is located, and said town clerk shall record the same in a book kept by him for that purpose. On the fifteenth day of March and September the town clerks of the several towns shall report to the secretary of State the names of all corporations whose annual returns have been filed for record during the preceding six months, in accordance with the provisions of this section, and the secretary shall report to the attorney-general, every six months, the names of all corporations which have failed to comply with the provisions of this section, and the attorney-general shall collect all forfeitures due under this section. Every corporation whose officers shall fail to comply with the requirements of this section shall forfeit to the State one hundred dollars for each failure.

Costs. For case before justice of the peace, actual cash costs not less than \$5; before city court from \$5 to \$25, according to amount involved; before court of common pleas or superior court, not less than \$25; before supreme court of errors, not less than \$50. Attorney's

fees not included. Attorney justified in asking deposit of \$15 for case in justice's court and \$50 in any other court before bringing suit. (*See Insurance Companies, Injunctions, etc.*)

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; also town courts in many of the towns. 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. In New Haven and Hartford jurisdiction of justice of the peace has been transferred to city court, except in cases of summary process and bastardy.

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, who shall attest the same and certify that the adverse party or his agent was present (if so), or that he was notified, and shall also certify the reason of taking such deposition, seal it up, direct it to the court where it is to be used, and deliver it, if desired, to the party at whose request it was taken. 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 subpoena and capias.

Descent and Distribution of Property in Intestate Estates. (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 lifetime 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 to the parent or parents, then 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 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.*)

Evidence. (*See Courts, Insurance Company, Corporations.*)

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. (*See Exemptions.*)

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 \$25, 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); of the property of any one person having wife or family, two tons of coal, specified amounts of food-stuffs; the horse of any physician or surgeon not exceeding \$200 in value, and his saddle, bridle, harness, and buggy, also his bicycle; one boat owned by one person, with rigging, tackle, etc., not exceeding \$200 in value, used for

planting or taking oysters or clams or taking shad; one sewing machine being property of any one person using it, or having a family; one pew being property of any person having family who ordinarily occupy it, and lots in any burying ground; 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.*)

Foreign Corporations. Section 80.—Unless otherwise expressly provided, the term "foreign corporation" shall mean every corporation not organized under the laws of this State. Section 81.—Any foreign corporation may purchase, hold, mortgage, lease, sell, and convey real personal estate in this State for its lawful use and purposes, and such real estate and other property as it may acquire, by way of foreclosure or otherwise, in payments of debts due such corporation; but no foreign corporation belonging to any of the classes engaged in the transaction of any kind of business not permitted to domestic corporations by the laws of this State, shall engage in or continue, in this State, the business authorized by its charter or the laws of the State under which it was organized, unless empowered so to do by some general or special law of this State, except for the purpose of carrying out and renewing existing contracts heretofore made. Sec. 82.—Every foreign corporation, except insurance and surety companies and building and loan associations, shall, before transacting business in this State, file in the office of the secretary of the state a certified copy of its charter or certificate of incorporation, together with a statement, signed and sworn to by its president, treasurer, and a majority of its directors, showing the amount of its authorized capital stock and the amount thereof which has been paid in, and, if any part of such payment has been made otherwise than in cash, such statement shall set forth the particulars thereof. Sec. 83.—Every foreign corporation with an office or place of business in this State, except insurance companies, surety companies, and building and loan associations, shall, before doing business in this State, appoint in writing the secretary of the state and his successors in office to be its attorney, upon whom all process in any action or proceeding against it may be served; and in such writing such corporation shall agree that any process against it which is served on such secretary shall be of the same legal force and validity as if served on the corporation, and that such appointment shall continue in force as long as any liability remains outstanding against the corporation in this State. Such written appointment shall be acknowledged before some officer authorized to take acknowledgments of deeds and shall be filed in the office of said secretary, and copies certified by him shall be sufficient evidence of such appointment and agreement. Service upon said attorney shall be sufficient service upon the principal, and may be made by leaving a duly attested copy of the process with the secretary of the state or at his office. Sec. 84.—When legal process against any corporation mentioned in Section 83 of this act is served upon the secretary of state, he shall immediately notify the corporation thereof by mail, and shall, within two days after such service, forward in the same manner a copy of the process served upon him to such corporation, or to any person designated by such corporation in writing. The plaintiff in the process so served shall pay said secretary at the time of such service a fee of twenty-five cents for each page of process, said fee in no case to be less than two dollars, which shall be recovered by him as part of his taxable costs if he shall prevail in the suit. Said secretary shall keep a record of all process served upon him, which shall show the day and hour when such service was made. Sec. 85.—Every officer of a foreign corporation transacting business in this State which fails to comply with the requirements of Sections 82 and 83 of this act, and every person who transacts business in this State as the agent of such delinquent corporation, shall be fined not more than one thousand dollars; but such failure shall not affect the validity of any contract by or with such corporation. The secretary of the state shall report such failure to the attorney-general, who shall thereupon institute proceedings against such corporation to restrain its further prosecution of business in this State. Sec. 86.—Every foreign corporation doing business in this State shall, within thirty days after an increase or reduction of its capital stock, file in the office of the secretary of the state a certificate substantially like that required of domestic corporations organized under the like conditions. Sec. 87.—The president and treasurer of every foreign corporation doing business in this State, which is not required by law to make other annual return in this State, shall, annually, on or before the fifteenth day of February or August, make, sign, and swear to and file in the office of the secretary of the state a certificate similar to the certificate required of domestic corporations (*See "Corporations"*), except that such certificate need not give the name of the agent or person in charge of its principal office upon whom process against the corporation may be served. The secretary shall thereupon record such certificate in a book kept by him for that purpose and shall furnish a certified copy to be recorded in the office of the town clerk of the town in this State in which such corporation has its principal office or place of business, and said town clerk shall record the same in a book kept by him for that purpose. On the fifteenth day of March and September the town clerks of the several towns shall report to the secretary of the state the names of all corporations whose annual reports have been filed for record during the preceding six months, in accordance with the provisions of this section, and the secretary shall report to the attorney-general every six months the names of all corporations which have failed to comply with the provisions of this section, and the attorney-general shall collect all forfeitures due under this section. Every corporation whose officers shall fail to comply with the requirements of this section shall forfeit to the State one hundred dollars for each failure. Sec. 88.—All penalties and liabilities which are imposed by the laws of this State upon officers, directors, and stockholders of domestic corporations for false and fraudulent statements and returns, shall apply to the officers, directors, and stockholders of foreign corporations doing business in this State.

Foreign Judgments. Not conclusive on question of jurisdiction. A foreign judgment when used by way of defense, is as conclusive, to every intent, as those of our own courts. In an action on a judgment rendered in another State, evidence on the part of the defendant that he had no legal notice of the suit and did not appear, is admissible, although the record of the judgment stated that the defendant appeared by his attorney. Where the foreign court has a peculiar and exclusive jurisdiction, its decree is binding upon the judgment of any other court, into which the

same subject comes immediately into controversy. The decision of a court of competent jurisdiction is conclusive upon the parties as to the title claimed under it and as to the facts directly put in issue and determined; so that such title or facts can not be again contested between the same parties, in the same court or any other. No greater effect is to be given to a foreign judgment in Connecticut than it would have in the State where it was rendered. A judgment rendered by a court in one State has no efficacy when it is sought to be enforced in Connecticut, unless such court had jurisdiction of the person against whom it is rendered, acquired either by service upon him of the process in the suit, or actual notice to him of the suit, or at least by his having appeared in it, and thus submitting to the jurisdiction of the court. Jurisdiction presumed to have been properly exercised, if court once had jurisdiction. Notice presumed of resumption of jurisdiction if required by practice in foreign court. A judgment recovered in a sister State is a bar to the further prosecution of an action pending at the time in this State between the same parties on the same cause of action. It makes no difference that the judgment of the sister State has been appealed from, and that the appeal is still pending, where, by the laws of that State, such appeal operates only as a proceeding in error, and does not supersede the judgment. Only such pleas are pleadable to a foreign judgment, as are pleadable where rendered.

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.*)

Guaranty Companies. Bonds of surety companies chartered by this State or authorized to do business therein, may be accepted in civil actions and proceedings instituted under the statutes. Every guaranty company organized under the laws of this State is under the supervision of the bank commissioner and subject to all the laws relating to the examination and report of banks, savings banks, and trust companies, and the said commissioner, in a separate annual report of these corporations, must clearly describe the various classes of assets and liabilities of each and state any special provision which has been made for the payment of such liabilities. No guaranty company is permitted to guarantee, by endorsement or otherwise, debenture bonds secured by loans upon real estate to an amount exceeding ten times the amount of the capital stock and surplus actually paid in, in cash, of said corporation or company. Guarantee companies must procure license from the insurance commissioner.

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

Husband and Wife. In all marriages contracted after April 19, 1877, neither husband nor wife acquires by force of the marriage any right to or interest in any property held by the other before the marriage or acquired after the marriage, except as to the share of the survivor in the property of the other as hereinafter stated. Wife married subsequent to April 19, 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.

Injunctions. Any judge of any court of equitable jurisdiction may, on motion, grant and enforce writs of injunction, which shall be of force until the sitting of such court and its further order therein, unless sooner dissolved. Superior court judge may dissolve temporary injunction granted by other court. All facts stated in application for injunction must be verified by oath. Plaintiff must give bond with satisfactory surety, to answer all damages in case of failure to prosecute to effect, before temporary injunction can be issued, unless the court shall be of opinion that temporary injunction ought to issue without bond. Injunctions may be granted forthwith, if the circumstances of the case demand it; or the court or judge may cause immediate notice of the application to be given to the adverse party, that he may show cause why such injunction should not be granted; and it shall be sufficient, on such application for a temporary injunction, to present to the court or judge the original complaint containing the demand for an injunction, duly verified, without further complaint, application, or motion in writing. Injunction may be granted against malicious erection of structure on one's land; for abatement or discontinuance of nuisance by manufacturer. No temporary injunction shall be issued against any person or corporation engaged in the business of manufacturing oil, manure, or phosphates from fish, to restrain or prevent the further prosecution of such business unless written notice, stating particulars, be left with defendant twenty-four hours before proposed hearing. Whenever a temporary injunction is granted in any cause before the return day thereof, it may be dissolved or modified by the court or judge who issued it, by any judge of the court to which the action is returnable, or by any judge of the superior court; provided a written motion for such dissolution shall be prepared before the return day. After the return day such motion must be returned to the court in which the action is pending, or if such court is not actually in session, to a judge thereof; but in case of the inability of such court or judge, from any cause, to hear such motion, it shall be heard and determined by the superior court or by any judge thereof. Any person who may be directly or indirectly interested in, or affected by the granting of any temporary or permanent injunction, may appear and be heard with regard to granting or dissolving the same. When in any action a temporary injunction has been granted, and upon final hearing judgment shall be rendered adverse to the continuance of such injunction, either party may apply to the court rendering such judgment, representing that he is desirous of taking the case to the supreme court of errors, and praying that said temporary injunction may be continued until the final decision therein; and unless said court shall be of opinion that great and irreparable injury will be done by the further continuance of said injunction, or that said application is made for delay and not in good faith, it shall be the duty of the court to continue said injunction until a final decision be rendered in the supreme court of errors. When in any action judgment shall be rendered for a permanent injunction ordering either party to perform any act, upon similar application to that above mentioned, a stay of operation of such injunction, pending final decision of supreme court of errors, may

be granted for similar reasons. The court in which such case is pending may, however, if in its opinion the cause of justice shall so require, dissolve said temporary injunction or remove the stay of said permanent injunction while said cause is so pending in the supreme court of errors.

Insolvency. Suspended except as to voluntary assignments in insolvency by corporations, owing to United States Bankruptcy Act.

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. Any person who shall loan money upon a note secured by mortgage on personal property, in which the sum of money loaned is stated to be greater than the amount actually loaned, or in which the rate of interest to be charged is greater than the rate allowed by law to be charged by pawnbrokers (25 per cent per annum), shall be punished by fine and imprisonment, and the mortgage and note secured thereby shall be null and void.

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 if the defendant makes no appearance on return day. Plaintiff may put motion for disclosure of defense on short calendar immediately after return day, where there is an appearance, or if the defendant's counsel in open court is unable to state that he has a defense, court will order judgment for plaintiff. 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.

Jurisdiction. (See *Courts.*)

Licenses. Auctioneers must have licenses, in towns from selectmen, in cities and boroughs from proper officers. Penalty for acting without license, fine of not more than \$50, or imprisonment not more than sixty days, or both. Proper officers of city or borough, or selectmen of town, may license and regulate any exhibitions therein, but selectmen shall not license any such exhibition within the limits of city or borough. Selectmen of any town or chief of police in any city may grant licenses to suitable persons to be dealers and traders in second-hand bicycles, junk, old metals, and other second-hand articles, in such town or city respectively, which may be revoked for cause. Fee not more than \$10 and not less than \$2. Such dealer must keep record of transactions and make weekly statements under penalty of \$100 or less. Penalty for selling without license, fine \$100 or less, or six months imprisonment or less. Licenses to pawnbrokers issued in same manner; fee \$50. Bond of \$2,000 required. Pawnbrokers must keep record of pledges and make weekly statements. Pawnbrokers and loan brokers, and all persons who loan money on the pledge of personal property, are prohibited from taking or receiving directly or indirectly, for use of money loaned on personal property, any more than the following rates: For the use of money amounting to \$15 or under, five per centum per month or fraction thereof; for the use of money exceeding \$15 in amount and not exceeding \$50 in amount, three per centum per month or fraction thereof; for the use of money exceeding \$50 two per centum per month or fraction thereof. Pledges can not be sold in less than six months. Pharmacists must be licensed. License for sale of liquors issued by county commissioners. Maser plumbers licensed by proper officers of city, borough, or town. Pilots licensed by superior court. Persons manufacturing, selling, or dealing in any material or compound more explosive than gunpowder must have license from selectmen (\$5 per year), and no person can use, procure, or transport such explosive without written permission (25 cents) from town clerk or selectmen. Itinerant vendors must have State and local license. Words "itinerant vendor" include all persons, both principals and agents, who engage in a temporary or transient business in this State, either in one locality or in traveling from place to place, selling goods, wares, and merchandise, and who for the purpose of carrying on such business, hire, lease, or occupy any building or structure for the exhibition and sale of such goods, wares, and merchandise. No itinerant vendor shall be relieved or exempted from the provisions and requirements of this act by reason of associating himself temporarily with any local dealer, auctioneer, trader, or merchant, or by conducting such temporary or transient business in connection with, or in the name of any local dealer, auctioneer, trader, or merchant. These provisions do not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to *bona fide* sales of goods by samples for future delivery, nor to hawkers on the street or peddlers from vehicles. Itinerant vendors must deposit with treasurer of State \$500 and pay to State license fee of \$100 per year. Applications for State license must be sworn to. Itinerant vendors must exhibit State license to proper officer of town, pay \$25, have State license indorsed, and receive local license before doing any business. Sworn statement to State treasurer required before holding special sale of bankrupt's, etc., goods. Maximum penalty for selling without license \$50 and sixty days, or both. State deposit to be surrendered sixty days after cancellation of State license. State treasurer subject to garnishee process in actions against itinerant vendors. Dentists must have license. Lodging houses which are patronized by roving or transient persons to whom beds or rooms are furnished at prices less than 50 cents a night and containing accommodations for not less than five persons, must be licensed by proper officer of city, borough, or town. Fee \$10 per annum. Maximum penalty for violation, \$100. Barbers, osteopaths, maternity hospitals, surety companies, must be licensed.

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 foreclosed 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. 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.

Limited Partnerships. Such partnerships (except banking and insurance) shall consist of one or more partners, jointly and severally responsible, as in ordinary cases, to be called general partners; and one or more partners, furnishing capital to the partnership stock, whose liability shall not extend beyond the capital so furnished by them, to be called special partners. Such partnerships shall be conducted under a company name, in which the name of one or more of the general partners shall appear; and if any special partner's name shall be used in said company name, he shall

be held liable as a general partner. No such partnership shall be deemed to be formed until the persons forming it shall make, and severally sign and acknowledge before any officer authorized to take the acknowledgment of deeds, a certificate stating the company name and names and residences of all the partners, designating which are general and which are special partners, and which of the general partners are authorized to transact the partnership business and sign the firm name, and also the amount of capital furnished by each special partner and the time at which the partnership is to commence and terminate; nor until such certificate, and also a certificate of the amount actually paid in by each special partner, signed and sworn to by such of the general partners as are authorized to transact the partnership business, shall be filed and recorded in the office of the town clerk of the town where the principal business of the partnership is to be carried on; and a copy of such certificate shall be *prima facie* evidence of the matters therein contained; and the partnership shall be responsible only for the acts of the general partners designated as specially authorized as aforesaid; and copies of said certificate shall, in like manner, be filed in every town where such partnership may have a place of business. Terms of such partnership must be published for six weeks in newspaper published in county where business is to be carried on. Any such partnership may be renewed by filing at any time before its expiration, with the town clerk, a sworn certificate of the general partners, setting forth the time for which said renewal is made, whether the special capital has been reduced or impaired since the last certificate filed by said partnership, and if so, to what amount, and by publishing not less than once a week for two weeks in a newspaper published in county, the time at which the said renewed partnership is to commence and terminate, signed by the partners thereto, and specifying which are general and which are special partners. If the requirements concerning original certificate are not complied with, or false certificate be made, all special partners shall be liable as general partners. All advancements to the capital stock by the special partners shall be in cash and no part of the capital furnished by them shall be withdrawn, either in the shape of dividends, profits or otherwise, at any time while such partnership continues; except that any special partner may lawfully be paid from the assets of such partnership, each year during the continuance thereof, a sum not exceeding 10 per centum upon the cash contributed by him to the capital stock; provided that such payment shall only be made out of the net profits actually earned by such partnerships, during the year for which such payment is made. No special partner shall under any circumstances be considered a creditor, or allowed to claim as a creditor. No special partner shall be joined as a party in any action by or against such partnership unless liable as a general partner.

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 brickyard. 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. When personal property is mortgaged with real estate such mortgage may be foreclosed as if wholly of real estate. In all chattel mortgages there must be a particular description of each article of personal property. Judgment for deficiency after sale, permitted. Such sum in excess of 10 per cent per annum as is paid for interest shall be applied as payment on account of the principal debt and shall be deducted therefrom.

Notaries Public hold office for two years from first day of February of year in which commissioned, unless commission is sooner revoked by Governor. May exercise their function at any place in State. May take acknowledgments, administer oath, take deposition, subpoena witnesses to give deposition. The authority and official acts of any notary may be certified to by the clerk of the superior court of the county in which he resides, except in New London County, where the certification is made by the clerk of the court of common pleas. In 1901 the legislature passed an act validating all ministerial acts previously done by any notary after the termination of his office or outside of the local limits of his jurisdiction, if otherwise legal.

Notes and Bills of Exchange. Negotiable Instruments Act now in force. 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 Sunday or 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, are 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 Saturday when that entire day is not a holiday.

Pawn Brokers. (See *Licenses*.)

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.

Private Banks. (See *end of State Banks and Trust Companies*.)

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*.)

Records. Warranty, mortgage, quitclaim deeds must be recorded in office of town clerk in town where land lies, also assignments of mortgage, conditional bills of sale, chattel mortgages, assignments of future earnings. Certificate of trade-mark to be filed for record in office of secretary of

state. Certificate of unsatisfied judgment to be filed for record in town clerk's office. (See *Conveyances, Insurance Companies, Limited Partnerships, Judgments, etc.*)

Redemption. (See *Mortgages*.)

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.

Sales by Retail Dealers. When any person who makes it his business to buy commodities and sell the same in small quantities for the purpose of making a profit, shall at a single transaction not in the regular course of business, sell, assign, or deliver the whole, or a large part of his stock in trade, such sale shall be void as against all persons who are his creditors at the time of such sale, assignment or delivery, unless he shall not less than seven days nor more than thirty days previous to such sale, assignment or delivery, caused to be recorded in the town clerk's office in the town in which said vendor conducts his said business, a notice of his intention to make such sale, assignment, or delivery, which notice shall be in writing, describing in general terms the property to be sold, assigned, or delivered, and all conditions of such sale, assignment or delivery, and the parties thereto; and said notice shall be signed by such person or in his name by his attorney.

Service. Service of a writ of summons in case of a resident is made by reading it and the complaint accompanying it in the defendant's hearing, or by leaving an attested copy in the defendant's hands or at his usual place of abode; in case of a non-resident, the several courts, other than courts of probate, and the judges, clerks, and assistant clerks thereof, or any county commissioner, in term time or in vacation, may, except where it is otherwise specially provided by law, make such orders as may be deemed reasonable, in regard to the notice which shall be given of the institution or pendency of all complaints, writs of error and appeal from probate, which may be brought to or pending in any court, when the adverse party, or any person so interested therein, that they ought to be made parties thereto, reside out of the State, or when the names or residences of any such persons in interest are unknown to the party instituting the proceeding; and such notice having been given and proved shall be deemed sufficient service and notice.

State Banks and Trust Companies. Every State bank and trust company shall at all times maintain a reserve fund of 15 per centum of its aggregate deposits. Of this reserve fund not less than four-fifteenths shall consist of gold and silver coin, the demand obligations of the United States, or national bank currency, and be held by such bank or trust company in its banking office. The remainder of said reserve fund may consist of balances subject to demand draft with reserve agents, and of railroad bonds which are legal investments for the savings banks of this State, provided, that said reserve agents shall be banks which are members of the clearing house associations of New York, Boston, Philadelphia, Chicago, or Albany or State banks or trust companies located in New Haven or Hartford, and in each instance approved by the bank commissioners; and provided, that said railroad bonds, held as part of said reserve, shall at no time exceed at par value one-fifth of the total reserve fund. Whenever the reserve fund of any State bank or trust company shall be below 15 per centum, such bank or trust company shall not make any new loans or discounts, or make any dividends of its profits, until its reserve fund is restored to the required 15 per centum. The bank commissioners shall notify any State bank or trust company whose reserve fund shall fall below 15 per centum, and if said bank or trust company shall fail for thirty days thereafter to make good such reserve fund, the bank commissioners may apply for the appointment of a receiver to wind up its business. No State bank or trust company shall make any loan or discount on a pledge of its own stock, nor establish any branch office, or agency thereof, nor employ any agent or person to make loans or discounts at any other place than the banking house. The total liabilities to any State bank or trust company 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 10 per centum of the amount of the capital stock of such bank or trust company actually paid in and its surplus and undivided profits combined; and the provisions of all State bank or trust company charters inconsistent herewith are hereby repealed. The provisions of this section shall not apply to loans secured by collateral, so long as the market value of such collateral shall exceed by 20 per centum the total liabilities secured in each case by such collateral, but no loan on collateral shall at any time exceed 20 per centum of the amount of the capital stock of such bank or trust company actually paid in and its surplus and undivided profits combined, and the total loans to any one person, company, corporation, or firm, including in the liabilities of the company or firm the liabilities of the several members thereof, shall at no time exceed 20 per centum of the capital, surplus, and undivided profits combined of said bank or trust company. Every State bank or trust company which shall violate the provisions of this section shall forfeit \$3,000 to the State for each offense. No State bank or trust company shall discount any paper made, accepted, or indorsed by any of its executive officers or clerks, or by any partnership of which any of such officers or clerks are members. When the loans and discounts of any State bank or trust company to parties in this State shall, in the aggregate, amount to one-half of its capital stock, it may loan to parties out of this State, and not otherwise. The commissioner of the school fund may at any time examine the books and accounts of any State bank or trust company in which there is stock belonging to the school fund; and the treasurer of the State shall have the same right, in case of stock in any State bank or trust company owned by the State. The stockholders of any State bank or trust company, 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 such State bank or trust company. No person shall vote on stock at a meeting of the stockholders of any State bank or trust company if said stock has been transferred to such bank or trust company or to any person in trust for such State bank or trust company, except in cases where said bank or trust company shall hold such stock as guardian, conservator, administrator, executor, or trustee under a will or of an express trust. Any person who shall vote in violation of this section shall be disqualified from holding any office in such bank or trust company for one year thereafter. 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. The commissioner of the school fund may vote upon the stock of any State bank or trust company which belongs to said fund, and the treasurer of the State may vote upon the stock of any State bank or trust company which belongs to the State. Three-fourths of the number of directors of any State bank or of the trustees or directors of any trust company shall be residents of this State.

No director of any State bank or director or trustee of any trust company shall be obligated to any such bank or trust company to an amount exceeding 5 per centum of its capital actually paid in and its surplus and undivided profits combined; and no such bank or trust company shall permit its directors or trustees to become obligated to it to an amount at any one time exceeding in the whole the sum of 20 per centum of its capital actually paid in and its surplus and undivided profits combined. The provisions of this section shall not apply to loans secured by collateral, so long as the market value of such collateral shall exceed by 20 per centum the total liabilities secured in each case by such collateral; but such loans on collateral to any one director or trustee shall at no time exceed 10 per centum of the capital stock of such bank or trust company actually paid in and its surplus and undivided profits combined. Every State bank or trust company which shall violate the provisions of this section shall forfeit to the State not less than \$500 nor more than \$1,000. If any director of any State bank or any trustee or director of any trust company shall receive any compensation for endorsing any paper discounted by such bank or trust company, he shall be fined not less than \$500 nor more than \$1,000 for each offense. The directors of any State bank or the directors of any trust company, in making any dividend, shall take the question thereon by yeas and nays, which shall be recorded on its records; and no such bank or trust company shall declare any dividend except from its earnings remaining after deducting all losses, all sums due for expenses, and all overdue debts upon which no interest has been paid for a period of six months, unless the same are well secured and in process of collection; and the trustees and directors voting for any dividend not in conformity with the provisions of this section shall be fined \$500, for which they shall be jointly and severally liable. The directors of any State bank or trustees or directors of any trust company, by vote of its stockholders, may, at any time, reduce its capital stock to such sum and such number of shares as they may determine, subject to the approval of the bank commissioners. The cashier of each State bank and the treasurer of each trust company, when he first takes office and as often as once in each period of five years thereafter, shall give a bond in the penal sum of not less than \$10,000, payable to such bank or trust company, with sufficient surety or sureties, which shall be accepted and approved by the directors or trustees, for the faithful performance of the duties of his office. Any corporation authorized to carry on the business of fidelity insurance or corporate suretyship in this State may be surety on such bond. No officer, director, or trustee of any such bank or trust company shall be surety on any such bond, and all sureties, other than corporate sureties shall be residents of this State. Every such bond, and every renewal or certificate of renewal thereof, shall be forthwith recorded at length upon the books of the bank or trust company to which it is given, and shall at all times be subject to the inspection of the bank commissioners; and every such bond and renewal certificate thereof shall be examined annually by said commissioners. It shall be the duty of the president of each State bank and trust company safely to keep the original bond or bonds required as aforesaid, and all renewals and certificates of renewal thereof, and to certify on the records of the bank or trust company that the copy of each bond or renewal certificate is correct and that the original of such bond or certificate is in his possession. If any such cashier or treasurer shall neglect to give the bond as aforesaid, within thirty days from the time of his appointment, his office shall become vacant. Each State bank and trust company shall make to the bank commissioners not less than five reports during each year, verified by the oath of the cashier or treasurer of such bank or trust company. Each such report shall exhibit in detail and under appropriate heads, according to the form which may be prescribed by the commissioners, the resources and liabilities of such bank or trust company at the close of business on any past day specified by the commissioners. Such report shall be transmitted to the commissioners within ten days after the receipt of a request therefor from them, and shall be published, in such form as they may prescribe, in a newspaper in the county where such bank or trust company is located. Any bank or trust company which fails to make and transmit any such report, when requested by the commissioners, shall forfeit to the State \$10 for each day that it delays to transmit such report. Any public official of the State or of any county, municipality, or school district is hereby authorized to deposit any funds or moneys in his hands belonging to the State, or to such county, municipality, or district, or held by him as such official or as trustee, in and with any of the national and State banks and trust companies in this State; provided, however, that such deposits shall only be made in his name as such official or trustee, or in the name of the State, county, municipality, or school district to which the money belongs, and that in no case shall the deposit by such official in any one bank or trust company exceed in the aggregate at any one time 30 per centum of the capital, surplus, and undivided profits of such bank or trust company; and provided further, that whatever interest or other pecuniary consideration such bank or trust company shall allow for or upon such deposit shall belong to and accrue to the benefit of the State, or such county, municipality, or district.

No person or persons, association, or body corporate, except banks, trust companies, or building and loan associations incorporated by the United States or by the General Assembly of this State, shall advertise or put forth a sign having thereon any of the following words: "Bank," "Trust," or "Savings," or any artificial or corporate name, or other words indicating that such person, persons, association, or body corporate is a bank, trust company, savings bank, or building and loan association, or shall in any way solicit or receive deposits as a savings bank. Every person, association, or body corporate violating the provisions of this act shall be fined not more than \$1,000. This act shall not affect firms or individuals doing business as private bankers or brokers under their own name or names.

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*.)

Trust Companies. (See *State Banks and Trust Companies*.)

Warehouse Receipts. No warehouseman shall issue any receipt for any goods, wares, etc., received unless the words "public warehouse" are displayed on the front of his warehouse; nor shall he issue such receipt directly, or as security for any money loaned or other indebtedness, unless the goods, wares, etc., are in his custody at his warehouse at the time of issuing such receipt; nor shall he issue any duplicate receipts while a former receipt for the same goods, etc., is outstanding and uncancelled, unless the second receipt is marked in red ink with the word "Duplicate" across its face. Warehouse receipts, unless marked "not negotiable" may be transferred by indorsement, and the indorsee shall be regarded as the owner of the goods, etc., specified so far as to give validity to any pledge, lien, or transfer made or created by such indorsee.

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 devise 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, upon plaintiff filing an affidavit that there is danger of his 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 five 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 fourth Monday in April and fourth Monday in October; New Castle county, court of general sessions 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, \$300.

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 necessities 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 personally from the time the sheriff received the writ, if actual levy be made within sixty days thereafter. Priority of lien remains in force five 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 employes 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. Pianos and organs leased or sold under contract exempt from execution process or distress for rent, provided the lessor or vendor notifies the landlord in writing of the claim thereon.

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 12th, February 22d, May 30th, July 4th, first Monday in September, Thanksgiving Day and Christmas, and Saturday afternoon in New Castle county. 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. All judgments must be renewed before January 1, 1906, otherwise their lien will be lost. Thereafter judgments must be renewed within ten years. 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 sheriffs', 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 curtesy. 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 each defendant and one to be filed.

Acknowledgments. The deed of a corporation shall be executed by having the seal of the corporation attached and being signed with the name of the corporation, by its president or other officer, and shall be acknowledged as the deed of the corporation by an attorney appointed for that purpose, by a power of attorney embodied in the deed or by one separate therefrom, under the corporate seal, to be annexed to and recorded with the deed.

Acknowledgment of Deeds. When any deed or contract under seal relating to land is to be acknowledged out of the District of Columbia, but within the United States, the acknowledgment may be made before any judge of a court of record and of law, or any chancellor of a State, any judge or justice of the supreme, circuit, or territorial courts of the United States, or any justice of the peace or notary public: *Provided* that the certificate of acknowledgment aforesaid, made by any officer of a State or Territory, not having a seal, shall be accompanied by a certificate of the register, clerk, or other public officer that the officer taking said acknowledgment was in fact the officer he professed to be. Deeds made in a foreign country may be acknowledged before any judge or notary public, or before any secretary of legation or consular officer or acting consular officer of the United States as such consular officer is described in section 1674 of the revised statutes of the United States, and when the acknowledgment is made before any other officer other than a secretary of legation or consular officer or acting consular officer of the United States, the official character of the person taking the acknowledgment shall be certified in the manner prescribed as to deeds out of the District of Columbia but within the United States. No deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney.

Actions. Justices of the peace have jurisdiction in all civil cases in which the amount claimed to be due for debt or damages arising out of contracts, express or implied, or damages for wrongs or injuries to persons or property, does not exceed three hundred dollars, including all proceedings by attachment or in replevin where the amount claimed or the value of the property involved does not exceed said sum, except in cases involving the title to real estate, actions to recover damages for assault or battery, or for malicious prosecution, or actions against justices of the peace or other officers for official misconduct, or actions for slander or libel, or actions on promises to marry; and said jurisdiction shall be exclusive when the amount claimed for debt or damages or the value of personal property claimed does not exceed \$50, and concurrent with the supreme court when it exceeds \$50. Jury trials before justices of the peace are abolished and all costs of court are payable in advance, non-residents being required to give bond. Judgments of justices of the peace, when the amount claimed exceeds \$20, exclusive of costs, may be recorded in the supreme court of the District of Columbia, and, when so recorded, will have the same force and effect as a judgment rendered by said supreme court. (See *Judgments*.)

Administration. The Probate 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 daily. All executors and administrators and guardians are required to give bond with security to be approved by the Court. The testator may waive the giving of bond, but the court always requires a bond sufficient to cover the debts of the deceased not to exceed double the value of the personal estate. 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. Probate 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 are prohibited from acquiring real estate. Corporations of which over 50

per cent of the stock is or may be owned by persons or associations not citizens of United States can not acquire or own real estate in District of Columbia.

Appeals. Appeals will lie from justices of the peace to the supreme court of the District of Columbia where more than \$5 is involved, and in actions for the recovery of possession of real estate. Appeals may be taken from the supreme court of the District of Columbia to the court of appeals of the District of Columbia. Appeals may be taken from the court of appeals to the supreme court of the United States in all cases involving \$5,000, exclusive of costs, 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. Submissions may be made either before or after suit is brought, except in cases where a party to be affected by the result is an infant or non compos mentis.

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, or affirmation, of all assignor's property, a list of creditors, with their residences and places of business, if known, 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 the grounds of his claim and 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, or that the debt was fraudulently contracted. Creditor must give bond, with approved surety or sureties, to be approved by the Clerk, in twice the amount of his claim for costs and damages if attachment is 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, Sections 5211-12-13.) 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. (See *Legal Holidays and Protest*.)

Chattel Mortgages. No bill of sale or mortgage or deed of trust to secure a debt of any personal chattels whereof the vendor, mortgagor, or donor shall remain in possession, is valid and effectual to pass the title herein, except as between the parties to such instrument and as to other persons having actual notice of it, unless the same be executed and acknowledged and within ten days from the date of such acknowledgment recorded in the same manner as deeds of real estate; and as to third persons not having notice of it, such instrument shall be operative only from the time within said ten days when it is delivered to the recorder of deeds to be recorded.

Collaterals. The holder of the note as collateral security for debt stands upon the same footing as the purchaser and may maintain suit thereon for his own benefit. The collateral pledged may be sold in accordance with the terms of the collateral note which usually provides that the collateral may be sold upon non-payment of the principal of the note, either at public or private sale, and in such cases the purchaser at any such sale obtains a valid title to the collateral sold.

Contracts. Every contract and obligation entered into by two or more persons, whether partners or merely joint contractors, whether under seal or not, written or verbal, and whether expressed to be joint and several or not, is for the purposes of suit deemed joint and several. On the death of one or more of such persons, his or their executors, administrators, or heirs are bound by said contract in the same manner and to the same extent as if the same were expressed to be joint and several. In actions *ex contractu* against alleged joint debtors it is not necessary for the plaintiff to prove their joint liability in order to maintain his action, but he is entitled to recover, as in actions *ex delicto*, against such of the defendants as shall be shown by the evidence to be jointly indebted to him, or against one only, if he alone is shown to be indebted to him, and judgment will be rendered as if the others had not been joined in the suit. Any of several joint debtors, when their debt is overdue, may make a separate composition or compromise with their creditors.

Corporations. Any three or more persons may form a company for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads and such other enterprise or business as is otherwise provided for. Such corporations may have a perpetual existence. No such company is authorized to transact business until 10 per cent of the capital stock shall have been actually paid in, either in money or property at its actual value; and the recorder of deeds, before filing any certificate of incorporation, must be satisfied that the entire capital stock has been subscribed for in good faith. All of the stockholders of such company are severally and individually liable to the creditors of the company in which they are stockholders for the unpaid amount due upon the shares of said stock held by them respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded. Every such company must annually, except insurance companies, within twenty days from the first of January, make a report, which shall be duly published and which report shall state the amount of capital and the proportion actually paid and the amount of existing debts. On failure to comply with this provision any creditor or other person interested may petition for mandamus and compel such publication to be made, and the Court will require the corporation or officers at fault to pay all costs of such proceeding, including counsel fees. Foreign corporations doing business in the District of Columbia are subject to service of process on their agents or on the persons conducting their business, or by leaving copy thereof at the principal place of business of such company, or at the residence of its agent. Corporations are prohibited from using their funds to deal in the stocks of other companies. Any company incorporated under the laws of the District is required to have a designated place of business therein where it can be served with process. The affairs of the corporation shall be managed by not less than three nor more than fifteen trustees, a majority of whom must be residents of the District. To be annually elected, except for the first year, by the stockholders, at such time and place as may be provided by the by-laws. Voting of stockholders at such meetings may either be in person or by proxy. Public notice of the time and place of holding such

election must be published not less than thirty days previous thereto in some newspaper printed and published in the District of Columbia. The fee of the recorder for filing all certificates of incorporation where capital stock is authorized is forty (40) cents on each \$1,000 of the amount of the capital stock of the corporation, as set forth in its certificate, provided that no fee shall be less than Twenty-five Dollars.

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.

Creditors' Bills. A creditor's bill may be filed to enforce a judgment where the property is subject to incumbrances. In such cases a trustee is usually appointed to make sale of the equitable interest of the defendant.

Days of Grace abolished.

Deeds. The following form of deed is now all that is required in the District of Columbia to convey a fee simple title to real estate:

This deed, made this . . . day of . . . , in the year . . . , by me, . . . of . . . , witnesseth: That in consideration of (here insert consideration), I, the said . . . , do grant unto (here insert grantee's name), of . . . , all that (here describe the property).

Witness my hand and seal. . . . (Seal.)
A deed must be recorded with the recorder of deeds and takes effect from the time of recording. A scroll is considered a sufficient seal.

Depositions. Depositions of witnesses to be used in any civil cause whether the case be at issue or not, may be taken under any of the following conditions: 1. Where the witness lives beyond the District of Columbia. 2. Where the witness is likely to go out of the United States or out of the District and not return in time for the trial. 3. Where the witness is infirm or aged, or for any reason the party desiring his testimony fear he may not be able to secure the same at the time of trial, whether the said witness resides within the District or not. 4. If during the trial any witness is unable, by reason of sickness, or other cause, to attend the trial, the deposition of such witness may, in the discretion of the court, be taken and read at the trial. The deposition may be taken before any judge of any court of the United States; before any commissioner or clerk of any court of the United States, or any examiner in chancery of any court of the United States; before any chancellor, justice, or judge or clerk of any court of any State or Territory or other place under the sovereignty of the United States, or any notary public or justice of the peace within any place under the sovereignty of the United States: Provided, that no such person shall be eligible to take such deposition who is counsel or attorney for any party to the cause, or who is in anywise interested in the event of the cause.

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 estate descended to the intestate on the part of the father or mother and there be no child or the descendant of any child, then to the brothers and sisters and their descendants. 3. If none, to the mother or father or the ancestors of the intestate and their descendants of the blood of the mother or father, grandmother or grandfather, as the case may be, subject to the widow's dower. 4. If none, then to the husband or wife and their kindred in equal degree, equally. 5. No distinction between whole and half blood on part of parent from whom estate descended. 6. If there be no heir, the lands shall escheat to the District of Columbia. Personal Property: If a widow and no child or descendants, parent, brother or sister or descendants, the widow shall have the whole; if child or descendants, the widow shall have one-third only; if no child or descendants, but parent, brother, etc., the widow shall have one-half. The surplus shall go as follows: (1) If children or descendants, to them equally per stirpes; (2) If no child or descendants and a father, then to the father; (3) If no father, but a mother, then to the mother; (4) If none, but a brother or sister or descendants, to them equally per stirpes; (5) If none, to collateral relations in equal degree; (6) There is no distinction between the whole and half blood; (7) No representation after descendants of brothers and sisters; (8) Beyond the fifth degree, the personal estate goes to the District of Columbia; (9) 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.

Divorce. Absolute divorces may be obtained in the District of Columbia for the following reasons: Where there is a prior valid marriage not dissolved. Where the marriage was contracted during the lunacy of either party (unless there has been voluntary cohabitation after the lunacy), or the marriage was procured by fraud or coercion. Where either party is matrimonially incapacitated at the time of the marriage and has continued so. Adultery by either party. Where either of the parties has not arrived at the age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after coming to legal age) but in such cases only at the suit of the party not capable of consenting. Divorces *mensa et thoro* may be obtained for drunkenness, cruelty, or desertion.

Dower. A wife is entitled to dower in all real estate owned by the husband at the time of his death, including equitable as well as legal estates.

Evidence. (See *Depositions*.)

Executions. Executions may be levied upon all goods and chattels of the debtor not exempt, and upon gold and silver coin, bank notes or other money, bills, checks, promissory notes or bonds, or certificates of stock in corporations owned by said debtor, and upon money owned by him in the hands of the marshal or of the constable charged with the execution of such writ, and also upon all legal leasehold and freehold estates of the debtor in land. Executions on judgments before justices of the peace may be superseded, according to the amount of the judgment, upon good and sufficient security being entered by a person who may at the time be the owner of sufficient real property located in the District, above all liabilities and exemptions, to secure the debt, costs and interests from one to six months, but there can be no stay of execution for wages of servants or common laborers, nor upon any judgment for less than \$5.

Exemptions. (Actual residents.) In addition to wearing apparel, etc., household furniture to the value of \$300, implements of debtor's trade or business to the value of \$300, 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 for two months. Exemptions are only allowed where the party claiming such is the head of a family or householder residing in the District.

Foreign Judgments. Suits may be instituted in the supreme court of the District of Columbia on any judgment of a court of record in any other jurisdiction. The declaration in any such case must be accompanied by a transcript of the record of such judgment verified according to the

act of congress in such cases made and provided, and judgment in due course may be rendered on such transcript as in any other case.

Garnishment. After judgment the writ of garnishment may issue against specific property or credits in the hands of the garnishee and on the return of the writ, if there be credits, the judgment or condemnation follows. The writ of garnishment can not be issued against the United States or the District of Columbia.

Guaranty Companies. Guaranty companies may be organized under the provisions of the code, but all such companies must have a capital of \$1,000,000. Such company may do a storage business when its capitalization amounts to not less than \$1,200,000.

Husband and Wife. The wife's property is exempt from the husband's debts. The husband may convey direct to his wife. The wife may use all of her property of every description as fully as if she were unmarried, and may dispose of the same by deed, etc., as fully as if she were unmarried. She also has power to trade and to sue and be sued, but no married woman under the age of twenty-one years can make a valid deed or conveyance. On the death of a married woman the husband is entitled to an estate by courtesy in her fee simple property of which she dies intestate. On the death of the wife intestate her entire personal estate becomes the property of her husband. The husband is not liable for the debts of his wife contracted before marriage.

Injunctions. The supreme court of the District of Columbia sitting in equity has the usual power to grant restraining orders and injunctions.

Insurance Companies. The business of insurance companies is controlled by the provision in the code creating an insurance department, which department has entire supervision of the business of all insurance conducted in the District of Columbia, and, in a general way, this supervision is the same as the insurance departments of many of the States.

Interest. The legal rate of interest in the District of Columbia is 6 per cent, and in any suit where the contract is tainted with usury the plaintiff forfeits the whole of the interest so contracted to be received, and where usurious interest has been paid it can be recovered provided action for such recovery be brought within one year. In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in any State or Territory of the United States where such contract rate of interest is lawful, the judgment for the plaintiff shall include such contract interest to the date of the judgment and interest thereafter at the rate of 6 per centum per annum until paid.

Judgments. Every judgment is good and enforceable by an execution issued thereon for a period of twelve years from the date when an execution might first have been issued thereon or from the date of the last revival thereof by *scire facias*. Judgments of justices of the peace are not liens on real estate until recorded in the supreme court of the District of Columbia.

Jurisdiction. (See *Actions and Appeals*.)

Legal Holidays. 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 day are not protested until Monday. Process is not issued or served by the marshal after 12 o'clock on Saturday.

Liens for Rent. The landlord has a tacit lien for his rent upon such of the tenant's personal chattels on the premises as are subject to execution for debt, to commence with the tenancy and continue for three months after the rent is due and until the termination of any action for such rent brought within said three months. This lien is enforced by attachment, upon affidavit, by judgment against the tenant and execution, and by action against any purchaser of the chattels with notice of the lien.

Limitations. Fifteen years for recovery of lands, tenements or hereditaments; executor's or administrator's bond, five years; instruments under seal, twelve years; simple contracts and recovery of personal property and damages for its unlawful detention, three years; statutory penalty or forfeiture, libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or imprisonment, one year; all other actions three years. Usual exceptions in favor of persons under disability. Acknowledgment to revive action on debt must be in writing. Part payment will take debt out of statute.

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

Mortgages. Mortgages are almost entirely supplanted by deeds of trust, requiring no court proceedings to foreclose. Joining the wife is necessary to bar dower.

Notaries. Notaries are appointed by the President of the United States for a term of five years; number unlimited. Their powers are such as are usually given to notaries throughout the United States.

Partnerships. Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within the District may be formed by any two or more persons, but the number of special partners is limited to six. The special partners are not liable for the debts of the partnership beyond the fund contributed by them to the capital. A certificate setting forth the firm name; general nature of the business to be conducted; names of all the general and special partners interested therein, distinguishing which are general and which are special, and their respective places of residence; the amount of capital contributed by each special partner to the common stock; and the period at which the partnership is to commence and terminate must be filed with the clerk of the supreme court after having been acknowledged in the manner prescribed for deeds.

Protest. May be made by a notary public under his hand and seal; or by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. Where a foreign bill, appearing on its face to be such, is dishonored by non-acceptance, it must be duly protested for same; and where such a bill which has not previously been dishonored by non-acceptance, is dishonored by non-payment, it must be duly protested for same. If it is not protested the drawer and indorsers are discharged. Where a bill does not so appear to be a foreign bill, protest thereof in case of dishonor is unnecessary. The protest must be annexed to the bill or contain a copy thereof and must state the (1) time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting; (4) the demand made and the answer given, if any, or the fact that the drawer or acceptor could not be found.

Records. The exemplification of the record under the hand of the keeper of the same, and the seal of the office or court where such record may be made, is good and sufficient evidence to prove any record made or entered in any of the States or Territories of the United States; and the certificate of the party purporting to be the keeper of such record, accompanied by such seal, is *prima facie* evidence of that fact. A copy of the record of any deed or other instrument in writing, not of a testamentary character, where the laws of the State, Territory, or country

where the same may be recorded require such record, and which has been recorded agreeably to such laws, and the copy of any will which said laws require to be admitted to probate and record, by judicial decree, and of the decree of the court admitting the same to probate and record, under the hand of the clerk or other keeper of such record and the seal of the court or office in which such record has been made, is *prima facie* evidence to prove the existence and contents of such deed, will, or other instrument in writing, and that it was executed as it purports to have been.

Suits. The plaintiff may join in his declaration in debt, in separate counts, different claims for liquidated amounts due him, whether founded on judgment, specialty, or simple contract, and also claims for unliquidated damages for breach of contract, whether growing out of specialties or simple contract. He may also join in his declaration, in separate counts, different claims for damages for torts, whether committed with force or not. He can also join, in the same declaration, counts sounding in contract with counts sounding in tort, when they relate to the same transaction. 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 \$1.50, and in cases of attachment before judgment about \$6.85.

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 May of each year. New assessments are made every three years, for real estate (unless improvements are put on) and every year for personal property by a permanent Board of Assessors.

Transfer of Corporation Stock. Stock in corporations may be transferred by indorsement in blank unless by express restriction. Forms of such transfers are always printed on back of stock. Transfers and sales by executors and administrators may be made after an order of court has been obtained.

Trust Companies. Trust companies can be organized under the general provisions of the code on that subject. No trust company can be incorporated with less capital stock than \$1,000,000. May do a storage business with a capitalization of not less than \$1,200,000. Foreign companies desiring to operate in the District must first comply with the provisions for the organization of trust companies under the laws of this District.

Wills. All wills and testaments must be in writing and signed by the testator, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said testator by at least two credible witnesses, or else they shall be utterly void and of no effect, and moreover, no devise or bequest, or any clause thereof, shall be revocable otherwise than by some other will or codicil in writing or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same by the testator himself or in his presence and by his direction and consent; but all devises and bequests remain and continue in force until the same shall be burned, canceled, torn, or obliterated by the testator or by his direction in the manner aforesaid, or unless the same be altered or revoked by some other will, testament, or codicil in writing of the testator signed in the presence of at least two witnesses attesting the same, any former law or usage to the contrary notwithstanding. No will, testament, or codicil is effectual for any purpose whatever unless the person making the same be, if a male, of the full age of twenty-one years, and if a female, of the full age of eighteen years, and be at the time of executing or acknowledging it, of sound and disposing mind and capable of executing a valid deed or contract. Any will executed after January 17, 1887, and before January 1, 1902, devising real estate, from which it shall appear that it was the intention of the testator to devise property acquired after the execution thereof, shall be deemed, taken and held to operate as a valid devise of all such property; and any will hereafter executed, which shall by words of general import devise all of the estate or all of the real estate of the testator shall be deemed, taken and held to operate as a valid devise of any real estate acquired, by said testator after the execution thereof, unless an intention shall appear to the contrary. Where a devisee or legatee dies before the testator, leaving issue, such issue stands in the place of the deceased devisee or legatee unless a contrary intention appear from the will.

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 precept 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 county (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, respecting 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, or is fraudulently disposing of his property for the purpose of avoiding the payment of his just debts or demands, or is fraudulently securing his property for such purpose. 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. Service of notice of the suit may be either personal or by publication where attachment is levied and property is not retaken by defendant. No arrest allowed in civil actions. Writs 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

SYNOPSIS OF THE LAWS OF FLORIDA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by Messrs. BLOUNT & BLOUNT, Attorneys at Law, Pensacola.

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,

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—collector or holder of commercial paper, attached to bill of lading not a warrant of the quantity or quality of the goods represented thereby except by express contract in writing, 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 precept. The form and effect of trust deeds have not been disturbed by statute. It is a criminal offense to mortgage personal property more than once without the consent of first lienor.

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. Words of limitation unnecessary. Husband may convey direct to wife.

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.

Costs. Non-resident plaintiff required to give \$100 bond to secure costs. The defendant may have suit dismissed if bond not given.

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.

Creditors' Bills may be brought before claim is reduced to judgment, but suit at law must be first brought and judgment must be obtained before decree can be rendered.

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: Insanity—when permanent, 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.

Evidence. Witnesses not disqualified by reason of interest. In civil cases, husband and wife may testify for or against each other. In suits by or against lunatics or personal representatives, heirs-at-law, next of kin, assignee, legatee, devisee, or survivor of a person deceased, no evidence of a transaction or communication between such lunatic or deceased person and the opposing party or those under whom he claims, can be given by the opposing party, unless such evidence is first offered in behalf of such lunatic representatives, legatees, devisees, etc.

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.

Foreign Corporations. Commercial corporations can do business in this State without restriction. If no officer in State upon whom service of process can be made, such service may be made upon any agent transacting business for it in the State.

Foreign Judgments. Judgments obtained in the several courts of the State, may be recorded in any county and have same force and effect as if originally obtained therein. Judgments obtained in other States or countries, merely evidence, and have to be sued upon to be made effective as judgments.

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

Garnishment. (See *Attachment*.)

Guaranty Companies. Guaranty Companies are permitted to become surety upon bonds for all purposes after complying with certain statutory requirements.

Holidays. Whenever reference is made, in contracts to be performed in Florida, to legal holidays, such day shall be understood to be the days mentioned under title Bills and Notes, and Good Friday.

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. Wife may sue with respect to separate estate without husband joining. Infant wife may join husband in sale of her real estate.

Injunctions. Injunctions are granted without bond upon affidavit of inability to give bond, and upon proof satisfactory to the judge that such affidavit is true, and that the statements of the bill are true. Injunctions are granted to stay proceedings at law; to restrain the sale of property under execution or decree obtained against one other than the owner of the property; to restrain the destruction of timber by cutting, boxing, or otherwise; to restrain a levy upon exempt property; to prevent the claiming of exemptions upon property not legally exempt; and to prevent the removal from the State of mortgaged personal property.

Insolvency. Statutes suspended by national bankruptcy law.

Insurance Companies. Foreign and domestic, are placed, by statute, under control of insurance commissioners, composed of State treasurer, State comptroller, and attorney-general. They must annually file a statement with, and obtain from the State treasurer, a certificate before being authorized to do business. Certificate may be revoked if company refuses to pay judgments which have been legally obtained against it.

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.

Liens. In order to secure a lien by lis pendens, a statement must be filed with the clerk of the circuit court, and recorded by him in a book kept for that purpose, setting forth the names of the parties, and the nature of the relief sought, and the description of the property upon which it is desired to obtain a lien. Statutory liens are given to laborers and material-men. Property for which materials are furnished upon which labor has been done, is liable to persons not in privity with owner to the extent of the unpaid balance of debt due to contractor. Owner personally liable in like amount. Statutory liens upon real estate, in order to be available as against subsequent purchasers or lienors, must be recorded within three months, and suit must be brought within twelve months after the furnishing of the material, or the performance of the labor. Liens upon personal property exist only while possession is retained by lienor.

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 men-

tioned, 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.

Notaries. Both men and women over twenty-one years may be appointed notaries public. They must renew commissions every four years. May administer oaths, take acknowledgments and perform marriage ceremony. \$500 bond is required to be given. Certificate must show date of expiration of commission.

Notes and Bills of Exchange. Form and interpretation defined by statute. No requirement that it shall be made payable at a bank or any fixed place. 5 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, any general election day, and 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, Shrove Tuesday or Mardi Gras in every city in which there is a carnival association organized for the purpose of celebrating it, shall be deemed presentable for payment or acceptance on the secular or business day next succeeding such holiday.

Partnership, Limited, and Special. None.

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 or from her husband. The husband must join either in the deed or powers of attorney. 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.*)

Records. Records of deed and mortgages are kept in the office of the clerks of the several circuit courts, and the original must be recorded in the county within which the property lies. Wills are required to be recorded with the several county judges and may be probated in any county in which the deceased left property, if he dies out of the State. If death takes place within the State, then in the county in which he has had residence, house, or other place of abode at the time of his death, and if he had none such, then in the county wherein he died.

Redemption. None, excepting tax sales.

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.

Service of Process. Out of circuit court, made by the sheriff or his deputy. Out of county judge's or justice of peace courts, may be made by sheriff or constable. Service in civil actions may be made either upon the person of the defendant, or by leaving a copy at his residence with some person over fifteen years of age. (See *Foreign Corporations.*)

Suits. Actions at law are commenced by filing a precept with the clerk. Personal service is required except in suits by attachment and garnishment. 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.

Testimony. (See *Depositions.*)

Transfer of Stock. Stock is transferable in the manner prescribed in the by-laws. No stock can be transferred until, after all previous assessments thereon have been fully paid. The transferee succeeds to all the rights and liabilities of the prior holder.

Warehouse Receipts. The warehouseman may give a receipt for goods deposited with him, describing such goods, and such receipt is negotiable, and transfers title to the holder.

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 two witnesses. Wills must be probated before admittance in evidence. Foreign wills, when duly probated according to laws of the State, where made and duly recorded in this State, are as effective as wills executed in this State. Foreign wills are construed according to law of State where they are executed.

SYNOPSIS OF THE LAWS OF GEORGIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by ELLIS, WIMBISH & ELLIS, Attorneys 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 their 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 eluded 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 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. (See "Sales.")

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 relieved, 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. By statute it is declared that where attachments are served by process of garnishment the situs of the debt is at residence of garnishee, provided that writ of attachment shall not be used to subject in this State wages earned out of this State by non-residents.

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 fifteen 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, or other ample security, and when such loan exceeds 10 per cent of the capital stock it shall not be made until approved in writing by a majority of the board of directors. 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. Most of the banks in Georgia (other than National banks) are State depositories, designated as such by special acts of the legislature. The State has a special lien for all public money deposited.

By Act of 1905. When any bank is indebted to any other party and shall deposit with such party any commercial paper and collateral for its debt, and such collateral paper shall be afterwards sent back to the bank, to be collected and remitted, such sender shall have a lien on the proceeds of such paper; such lien to rank with other liens according to date, and to attach from date of collection.

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. 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. Whenever such holiday shall fall upon Sunday, the Monday next following shall be deemed a public holiday and papers due on such Sunday shall be payable on the secular or business day next succeeding. Whenever either of the days shall fall on Saturday, the papers due on that day, or on the Sunday following, shall be payable on the business day next following. Bills of exchange must be accepted in writing to bind acceptor. In this State a contract to pay attorneys' fees, can not be collected unless the debtor, when served ten days before suit is filed with a written notice of intention to sue, the amount due and term of court to which suit will be brought, shall fail to pay such debt before return day. 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 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 willful violation of any of the conditions on which they are granted, or by a misuser or a nonuser of their franchises. All corporations organized under the laws of this State, or doing business therein, are required to register with the secretary of State and pay one dollar or be liable to a penalty of fifty dollars. This is in the nature of an annual return or report and must show name, when and by what authority incorporated, amount of capital stock, business, and principal office.

Costs. Costs are regulated as to amounts by fee-bills prescribed for the several officers entitled thereto. They are generally payable at the end of litigation, but a deposit of \$10 is required in courts of record from non-resident plaintiffs before the filing of suits and a deposit of \$6 in all divorce cases. Costs are taxed against the plaintiff in the event of dismissal or non-suit, and against the defendant upon judgment or settlement.

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, a court of appeals, 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* have 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 city courts, 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. The

court of appeals has jurisdiction of the trial and correction of errors in law and equity from the superior courts in all cases in which such jurisdiction is not conferred on the supreme court, and from the city courts of Atlanta, Savannah, and like city courts similarly organized, but constitutional questions shall be certified to the supreme court. The supreme court shall have no original jurisdiction, but shall be a court alone for the trial and correction of errors in law and equity from the superior courts in all civil cases, whether legal or equitable, originating therein or carried thereto from the court of ordinary and in all cases of conviction of a capital felony and for the determination of questions, certified from the court of appeals.

Creditors' Bills. Creditors' petitions (or bills) may be filed at the instance of any creditor, the privilege being extended to all to appear and become parties in a reasonable time. While the funds raised under a proceeding in the nature of a creditors' bill remain in the custody of the court, creditors having claims thereon may be made parties and assert their rights thereto. In case any corporation not municipal, or any trader or firm of traders, shall fail to pay at maturity, any one or more matured debts, payment of which has been properly demanded of such debtor and by him refused and shall be insolvent, it shall be in the power of a court of equity, under a creditors' petition (or bill), to which one or more creditors representing one-third in amount of the unsecured debt of such insolvent shall be necessary parties, to proceed to collect the assets of all and every kind and for that purpose may grant injunctions, appoint receivers and otherwise grant all equitable relief. Any creditor may become a party to such proceedings at any time before the final distribution of the assets.

Days of Grace have been abolished and all promissory notes, drafts, bills or other evidences of debt dated on or after October 1st, 1903, shall become due and payable on the date named in the contract.

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 attestation should be under his hand and official seal. 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. Under the law of Georgia these deeds can not be foreclosed as mortgages, the notes they are given to secure must be sued to judgment, the land must be re-conveyed to the grantor, and then levied on, but the lien of the judgment relates back to the date of the conveyance. In the Federal courts, however, foreclosure can be made in equity as in the case of ordinary mortgages. 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 latter 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 } ss. (Here insert the county and State where
County of } 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, deposes 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.

Evidence. The general common law rules of evidence prevail. The acts of Congress as to exemplification are copied into the statutes, full faith is given to acts and records of other States, and the existence and territorial extent of States, their forms of government, and symbols of nationality, the laws of nations, and general customs of merchants, the admiralty courts of the world and their seals, the political constitution and history of our own country, the seals of the several departments of the government of the United States and of the several States, are recognized without the introduction of proof; so also are the public laws of the United States and of the several States where published by authority. Transcripts from the books of domestic corporations may be used in evidence.

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. Executions obtained in the county of the defendant's residence, if entered within ten days upon the general execution docket of such county, bind all property of the defendant within the State from date of judgment. If entered after ten days the lien dates from such entry. If execution is obtained in a county other than the defendant's residence it must be entered upon the general execution docket of the county of defendant's residence within thirty days to bind all property within the State from date of judgment. If entered after thirty days, the lien dates from said entry.

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 of realty, or personally, or both, to the aggregate 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.

Foreign Corporations. All corporations, except those chartered and organized under the laws of this State, are held to be foreign corporations. Such corporations are recognized by comity only; they are subject to attachment, but have all the rights of reply and defense. They cannot exercise any corporate powers or privileges which by the constitution and laws of Georgia are denied to domestic corporations or the exercise of which would be contrary to the public policy of this State. There is otherwise no restriction upon foreign corporations except in the case of insurance companies and building and loan associations, which are required to make deposits. All corporations are subject to license fees for doing business and all are liable for taxes on property owned or held in the State. (See Corporations.)

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 summonses 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.

Guaranty Companies. Guaranty companies making contracts of fidelity insurance whereby, for a stipulated premium, they insure against defalcation, default, neglect, or dishonesty of a trustee, officer of the law, officers of court, agents or other employees, or such other persons as may be required to give bond, and who guarantee the performance of such bonds and become sureties thereon are permitted to do business and are accepted as sureties when they have a paid up capital of \$250,000, and shall have deposited with the treasurer of this State bonds of the United States or of this State to the amount of \$25,000, such bonds to be held as a guaranty of performance of obligations incurred within this State.

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

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

Injunctions. This exercise of the equity powers of the superior courts of this State is controlled and regulated according to the rules and practice of the courts of equity in England, and under a system built up by the decisions of the Supreme Court.

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.

Insurance Companies. Charters for insurance companies must be issued by the secretary of State. Any number of persons, not less than five may form a company and apply for a charter. Upon issue of the charter a fee of \$100 must be paid to the State treasurer. The capital stock must be at least \$100,000, and that amount must be paid in before commencing business. The company must have a board of directors not less than five nor more than fifteen in number. Stock shall be deemed personally. Charter privileges if not exercised in two years shall cease. Charters run for fifty years. Contracts must be in the form of written policies; no dividends shall be paid unless the earnings are sufficient to pay the same after deducting expenses and losses and providing for a reserve. Mutual or co-operative companies may be incorporated in like manner, except that they shall not be required to set out the proposed capital stock. Life and fire insurance policies which contain reference to applications, or to by-laws, constitutions or rules, must attach to policies true copies, or in default such shall not be admitted as evidence.

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 of the defendant's residence. (See Actions.)

Jurisdiction. (See Title Courts.)

License. No license is required of commercial travelers. Itinerant traders must pay license fees.

Liens. Under the laws of Georgia mechanics, material-men, machinists, employes of steamboats, millwrights, builders of gold mine machines, stone-cutters, and marble works laborers have special liens on property improved or worked on. Landlords have a general lien which takes effect from the levy of distress and a special lien on crops for rent of land on which they are raised. Common law liens of innkeepers, factors, pawnees, carriers, attorneys and others are recognized. Vendor's lien on land has been abolished. Attorneys have a special lien on papers in their hands and on property recovered in suits brought by them or successfully defended by them.

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' adverse 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, 1899, 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.

Notaries. Commercial notaries are appointed for four years by the superior courts. They must have seals and are authorized to attest deeds and mortgages, and make protest of commercial paper.

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. Transferees 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.

Partnership. The common-law rules governing partnership prevail. Each partner is individually liable for all the firm's debts. Special or limited partnerships are permitted, and upon proper notice and publication the special partner is only liable to the extent of his contribution to the firm capital. His name must not appear in the partnership, except that he may be advertised as a special partner. There is no distinction between special and limited partnerships. Special partnerships may be formed for any lawful business except banking and insurance.

Probate Law. (See *Administration of Estates, Deeds and Mortgages.*)

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

Records. (See *Deeds and Mortgages.*)

Redemption. There is no redemption in this State under judicial sales except in case of sale of property under tax execution where parties may redeem in twelve months.

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.

Revision. (See *Courts.*)

Sales. Sales may be made to pay debts, but any sale of stocks of goods in bulk is deemed fraudulent unless the seller delivers to the buyer a list of all creditors and the amount due each. It shall then be the duty of the buyer to notify the creditors of his purchase. This notice must be mailed five days before completion of the purchase.

Service. Service of process issuing from courts of record must be made by a sheriff or his deputy five days before the meeting of the court to which it is returnable. (See *Courts.*)

Suits. (See *Actions.*)

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.

Testimony. (See *Evidence and Depositions.*)

Transfer of Stock in Corporations. Stock in corporations can be transferred by written assignments of the certificates. Whenever a stockholder is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability unless such corporation shall fail within six months after such transfer. The stockholder in whose name the capital stock stands upon the books of the corporation at the date of its failure shall be primarily liable to respond on his individual liability, but on proof that any shareholders at the date of the failure are insolvent, recourse may be had against the person from whom such insolvent shareholder received his stock if he purchased within six months of the date of the failure. Foreign executors, administrators or guardians may transfer stock in a Georgia corporation by filing a certified copy of his appointment and qualification, and by advertisement once a week for four weeks of his intention to transfer; each advertisement to be published in that newspaper in which sheriff's sales are published.

Trust Companies. Trust companies may be chartered by the secretary of State. At least \$25,000 must be paid in. Notice of intention to organize must be published. They are authorized to make contracts, to sue and be sued, to act as fiscal agents, to receive and disburse money, to receive deposits of trust money and other property and to loan money on real or personal security; to buy, sell, and lease real estate; to act as trustee for bonds; to accept and execute trusts for married women, to act under appointment of courts as guardian, trustee or receiver; and to accept and execute other powers and duties conferred upon them.

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

Warehouse Receipts. Bonded warehouses are authorized and they are required to issue receipts for goods stored, which receipts are negotiable.

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 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 RICHARDS & HAGA, Attorneys 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'affaires 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. Married woman's acknowledgment, for the conveyance of the family homestead and community property used as a residence, must be taken upon an examination without the hearing of her husband. (See *Conveyances.*)

Actions. There is but one form of civil action in this State. An action is commenced within the meaning of the statute when the complaint is filed with the clerk. Every action must be prosecuted in the name of the real party in interest.

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 or wife and more than one child living, or one child living and lawful issue of one or more, one-third to husband or 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 (except such as have declared their intention to become citizens) and corporations (except railroad and mining), whose members are not exclusively citizens or persons who have declared their intention to become such, shall not acquire any land, other than mineral lands, or such as may be necessary for the working of mines or the products thereof.

They may take liens on real estate and acquire title thereto by enforcing the same. They take by succession as citizens; non-resident aliens must appear and claim succession within five years. All lands, except mining lands acquired by inheritance or enforcement of lien, must be sold within five years or they escheat to the State.

Arbitration. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property.

Arrests. The defendant may be arrested in a case for the recovery of money or damages on a cause of action arising upon a contract, express or implied, when the defendant is about to depart from the State with intent to defraud his creditors; also for money or property embezzled or fraudulently misplaced by a public officer or any person in a fiduciary capacity or when the defendant has been guilty of fraud in contracting the debt, or in concealing or disposing of personal property, for the taking or conversion of which the action is brought; or when the defendant has or is about to remove or dispose of his property with intent to defraud his creditors.

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 and Banking. Idaho has a full and complete law upon the formation and regulation of banks and the formation of banking corporations. No banking corporation can have less than five directors. All banks, other than national banks, are under the supervision of the bank commissioner. The banker has a general lien, dependent upon possession, upon all property in his hands belonging to a customer for the balance due him from such customer in the course of the business.

Bills of Exchange. Days of grace not allowed. (See *Notes and Bills*.)

Bills of Lading. No statutory provisions governing the same.

Chattel Mortgage. (See *Mortgages*.)

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, subscribed by the party or his authorized agent in writing. The homestead of a married person, or community property, occupied as a residence, can be conveyed only by both husband and wife joining in the execution, and acknowledgment by the wife upon an examination separate and apart from her husband. During the continuance of the marriage the wife has the management, control, and absolute power of disposition of her separate property, and may bargain, sell, and convey her real and personal property, and may enter into any contract with reference to the same, in the same manner and to the same extent and with like effect as a married man may in relation to his real and personal property. An instrument purporting to grant real property to take effect upon condition precedent, does not pass the estate upon the performance of the condition. Such instrument is merely an executory contract. (See *Acknowledgments*.)

Corporations. Private corporations may be formed by five (5) or more persons, at least one of whom must be a bona fide resident of this State. Such corporation is formed by executing articles of incorporation, con-

taining: 1. The name of the corporation. 2. The purpose for which it is formed. 3. The place where its principal business is to be transacted. 4. The term for which it is to exist (not exceeding fifty years). 5. The number of its directors or trustees, not exceeding fifteen, who must be stockholders of the corporation. 6. The amount of the capital stock and the number of shares into which it is divided. 7. The amount actually subscribed, and by whom. The articles may provide for the election of one-third of its directors annually. Railroad, wagon road, telegraph and telephone corporations must also state in their articles: 1. The kind of road, telegraph or telephone line intended to be constructed. 2. The place from and to which it is intended to be run, and all the intermediate branches. 3. The estimated length of the road or line. 4. They may provide in their articles the number of directors which shall constitute a quorum for the transaction of business, the decision of the majority of such quorum to be a valid act. 5. Whether meetings of the board shall be held within or without the State. 6. Whether stockholders shall be individually liable for debts of corporation. Railroad corporations must have subscribed, before filing articles, \$1,000 per mile; wagon road corporations, \$300 per mile; telegraph corporations, \$100 per mile, and the articles must be verified by affidavit of president, secretary or treasurer named in articles, that such stock has been subscribed. All articles of incorporation must be filed in the office of the county recorder, in which the principal place of business is located, and a copy thereof certified by the recorder, filed with the Secretary of State.

Corporations, Foreign. Foreign corporations desiring to do business in this State, may have all the rights and privileges of like domestic corporations, by filing with the secretary of State, and in the office of the clerk of the district court in the county where the principal place of business of such corporation is to be conducted, a copy of their articles of incorporation, and the designation of some person, residing in the county in which such principal place of business is to be located upon whom process issued by authority of or under any law of this State may be served.

Costs. When the plaintiff in an action is a non-resident, security for the costs may be required by the defendant.

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, including actions to enforce liens and mortgages upon real and personal property, and concurrent jurisdiction with justice's courts in all cases. Justice's jurisdiction, \$300.

Days of Grace abolished by the statute.

Deeds. (See *Conveyances*.)

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.

Descent and Distribution. Estate of intestate passes in the following order, subject to the debts of the decedent: 1. If surviving husband or wife, and only one surviving child, in equal shares to each; if more than one surviving child, then one-third to surviving husband or wife, and the remainder in equal shares to the children, or the issue of such as may be dead; if no surviving husband or wife, then in equal shares to the children, or the issue of such as may have died. 2. If no issue survive, one-half to the surviving husband or wife, and the other half to the decedent's father and mother, in equal shares, but if either be dead, then the whole of said half goes to the survivor of the other; if no father or mother survive, then one-half goes to the brothers and sisters, or to the issue of such as may be dead, in equal shares; if no husband, nor wife, nor issue survive the decedent, then the whole goes to the father and mother, if both survive, in equal shares, but if one be dead, the whole estate goes to the other. 3. If neither husband, wife, issue, father, nor mother survive, in equal shares to his brothers and sisters, or the issue of any that may be dead. 4. The whole estate goes to the surviving husband or wife, if no issue, father, mother, brother, or sister survive. 5. If neither husband, wife, issue, father, mother, brother, sister, nor issue of brother or sister survive, in equal shares to the next kin in equal degree; but in case of collateral kindred claiming through different ancestors, those who claim through the nearest ancestor are preferred. 6. If more than one child, and one child dies while a minor and unmarried, his share goes in equal parts to the other children, or the issue of such as are dead. 7. If decedent was a widower or widow, and leave no kindred, that portion of his estate which was common property at the death of his deceased spouse goes to the father of such deceased spouse, if living, or if such father be dead, to the mother; but if neither the father nor mother of such deceased spouse be living, then to the brothers and sisters, or the issue of such as are dead, in equal parts. 8. If no husband, wife, or kindred, the estate escheats to the State for the benefit of the school fund. (Rev. Stats., Sec. 5702.) Illegitimate child may be acknowledged by father in writing, signed by him in presence of competent witness, and then takes by descent. Illegitimate child takes from mother, and mother from illegitimate child. Kindred of half blood take equally with those of the full blood in same degree. Advancements are a part of distributive share. Husband and wife take one from the other, only as to the separate estate of either, by inheritance. The husband succeeds to all the common property in case of death of the wife. If the husband dies, the wife succeeds to one-half of the common property, and the other half is subject to his testamentary disposition; but if intestate, then it goes to his descendants in equal degree equally. An alien takes by inheritance, but must appear and claim his share within five years from death of decedent. All property owned by husband or wife, at date of marriage, or that comes to either by gift, descent, or bequest afterward, is the separate property of the one who so owned or received same; all other property is common property. (Rev. Stats., Secs. 5700 to 5715 inclusive.)

Divorce. Marriage may be annulled for any of the following causes existing at time of marriage: 1. Person when married was not of the age of legal consent, and such marriage was contracted without the consent of his or her parents, or of the person having charge of him or her, unless after attaining the age of consent such party for any time freely lives and co-habits with the other as husband and wife. 2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force. 3. That either party was of unsound mind, unless such party, after coming to reason, freely co-habits with the other as husband or wife. 4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge

of the facts constituting the fraud, freely co-habits with the other as husband or wife. 5. That the consent of either party was obtained by force, unless such party afterward freely co-habited with the other as husband or wife. 6. That either party was, at the time of the marriage, physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable. A judgment of nullity of marriage is conclusive only as against the parties to the action, and those claiming under them. Divorces may be granted for any of the following causes: 1. Adultery. 2. Extreme cruelty. 3. Willful desertion. 4. Willful neglect. 5. Habitual intemperance. 6. Conviction of felony. 7. Permanent insanity. Persons applying for divorce must have been a resident of this State for six months immediately preceding the commencement of such action.

Dower does not exist.

Evidence. No person is disqualified as a witness in any case by reason of his conviction of a crime. Any party to a suit can compel the adverse party to testify as a witness on the trial, within the jurisdiction of the court.

Employers and Employees. 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 not exceeding in value \$300, and provisions for family for six months; certain farm animals, etc., with food for six months; and water right for 160 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 professional 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.

Foreign Judgments. (See *Judgments*.)

Fraud, Statutory. No estate or interest in real property, other than for leases for a term of not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing. The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing and subscribed by the party charged, or his agent. Evidence, therefore, of the agreement can not be received without the writing or secondary evidence of its contents: 1. 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, except in the cases provided for in the next section. 3. An agreement made upon consideration of marriage, other than a mutual promise to marry. 4. An agreement for the sale of goods, chattels or things in action, at a price not less than \$200, unless the buyer accept and receive part of such goods and chattels, or the evidences or some of them, of such goods in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum. 5. 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 such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged. A promise to answer for the obligation of another, in any of the following cases is deemed an original obligation of the promisor, and need not be in writing: 1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in parts in consideration of such promise. 2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligations in perfect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made his surety. 3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person. 4. Where the factor undertakes, for a commission, to sell merchandise and guarantee the sale. 5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration and in connection with such transfer, enters into a promise respecting such instrument.

Garnishment. Any personal property or credits in the hands of another, belonging to the defendant, is subject to garnishment, as are debts owing to him from another if due. (R. S. Secs. 4309, 4310.)

Guaranty Companies. Trust companies, guaranty title, abstract, and safety deposit companies, may incorporate under the laws of this State, with power to furnish abstracts of title to real estate, guarantee the title, receive and hold on deposit and in trust and as security, real and personal estate, to act as trustees, assignees, receivers, guardians, executors,

administrators; to take, accept, and execute trusts, receive deposits of money and other personal property; invest their funds in real and personal securities by loan or otherwise, to act as the fiscal or transfer agent of any State, or any body politic or corporation, to purchase and sell real estate and to take charge of same; to become security for the payment of all damages for lands taken in the building of any railway, or the opening of streets, or any other purpose where land is taken under authority of law, and to become security upon any writ of error or appeal. Before exercising the above powers, such corporation shall have a paid-up capital of not less than \$25,000.

Holidays. Legal holidays constitute every Sunday, 1st day of January, 22d of February, the Friday following the 1st day of May, 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.

Husband and Wife. All the property of the wife owned by her before marriage, and that acquired afterwards by gift, bequest, or descent, or that which she shall acquire with the proceeds of her separate property, shall remain her sole and separate property, to the same extent and with the same effect as the property of a husband similarly acquired. The wife has the management, control, and absolute power of disposition of her separate property, to the same extent and with like effect as a married man may have in relation to his real and personal property. 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. There is no estate by courtesy or in dower. Marriage settlements are provided for, and when properly executed and recorded may vary the statute governing the relations of husband and wife concerning property rights. Minors may execute valid marriage settlements.

Injunctions. Injunctions may be granted at the time of issuing the summons upon the complaint, and at any time afterward before judgment by affidavits. An injunction can not be allowed after the defendant has answered, except upon notice or an order to show cause.

Insolvency. Insolvent debtor may file his petition in the district court of the county in which he has resided for the next preceding six months, praying to be discharged from his liabilities. The petition must show the residence of the insolvent, his inability to pay his debts, his willingness to surrender all of his property to his creditors; and there must be annexed thereto a schedule and inventory showing all of the liabilities, the amounts thereof, the names and residences, if known, of the creditors, and the items and value of the property owned by him; and the petition must be verified by the oath of the insolvent, who must also state, under oath, that he has no other property, credits, or effects, in the hands of another for him, in trust or otherwise; that he has not directly or indirectly sold or disposed of, or concealed any portion of his effects; that he has not, in contemplation of insolvency, or otherwise, compounded with his creditors or any of them, whereby to secure any of same, or to receive any benefit or expect any profit or benefit from any of his said creditors; or to defraud or deceive any creditor to whom he is indebted; and that he has in no instance created or acknowledged a debt for a greater sum than he honestly owes. Upon receipt of the petition, prepared and verified as aforesaid, the judge of the court makes an order declaring the petitioner insolvent and directing the sheriff of the county to take charge of his estate (except such thereof as is by law exempt from execution), including his books of account, papers, deeds, vouchers, etc., and keep same till appointment of an assignee, and forbidding the payment to the petitioner of any debts by his debtors, and directing that all actions and proceedings against him be stayed; which order must be published in a newspaper in the county, until a meeting of the creditors is had, and copies sent to each of the creditors. The discharge only affects residents in this State, and such non-resident creditors as appear and present their claims. The assignee is elected by the creditors. Debts against insolvent must be proved same as against a decedent's estate. Fraud on the part of petitioner, if shown, prevents discharge. (Rev. Stats. Secs. 5875 to 5932.)

Insurance. Any number of persons residing in this State who own personal or real property of not less than \$100,000 in value which they desire to have insured, may associate themselves together for the purpose of mutual co-operative insurance against loss by fire, lightning, tornadoes, cyclones, wind-storms, and the fidelity of persons, and form an incorporated company for such purposes, and issue policies.

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.

Jurisdiction. The district courts in this State are courts of general jurisdiction.

License. Persons engaged in banking, loaning money, etc., are required to pay license.

Liens, Mechanics'. Every person performing labor upon or furnishing materials used in the construction or repair of any mining claim, building, or other improvement, has a lien thereon. A sub-contractor by giving notice to the owner that he intends to claim same, and the amount due him from the contractor, has a lien not to exceed the amount due from the owner to the contractor at the time of giving the notice. Farm laborers have lien upon the crop and products thereof, upon which they bestow labor. All liens must be set forth by a statement in writing, showing the amount due, the facts connected with the matter, that there are no credits due on the claim, or offsets against the same; which statement must be verified by the claimant, and recorded in the office of the county recorder, if on claim of original contractor, within ninety days, if on claim of other persons, within sixty days from the time of the completion of the structure, the completion of the labor, or the furnishing of the materials. Lien must be enforced by suit within six months, unless credit is given; expires at all events in two years.

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 courtesy 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 a married woman 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.

Mines and Mining. (Principal regulations under United States Statutes.) Quartz locations may be 1,500 feet long and 300 feet on each side of the middle of lode. Monuments must be established at all exterior angles of claim. Claim should be tied to some natural or permanent monument. Copy of location notice must be posted at discovery within three days after discovery. Notice of location must be recorded within ninety days after location; within sixty days ten-foot shaft must be sunk or its equivalent. Location notice must contain name of locator, name of claim, date of discovery, dimensions, distance from some permanent, natural, or artificial object; name of mining district, county, and State. Placer locations made in same manner as quartz locations, except that within fifteen days after making location, locator must excavate not less than 100 cubic feet for purpose of prospecting claim, and must record notice of location within thirty days after making location.

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.

Notaries. when requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange or promissory notes and protest the same for non-acceptance and non-payment; exercise such other powers and duties as by the law of nations and commercial usage, or by the laws of any other Territory, State, government, or country may be performed by notaries. Attach acknowledgments or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person. Give certificate of such proof or acknowledgment; to take depositions, affidavits, and administer oaths and affirmations in all matters incident to duties of the office. To keep a record of all official acts; when requested, and upon payment of his fees therefor, to make and give a certified copy of any record in his office; to provide and keep an official seal, on which must be engraved his name, the words "Notary Public," and the name of the county for which he is commissioned. To authenticate with his official seal all official acts.

Notes and Bills. Notes and bills are governed by the rules of the Uniform Negotiable Instrument Law, as recommended by the American Bar Association. (Sess. Laws 1903, p. 380.)

Partnership, Limited and Special. A special partnership may be formed by one or more persons as general partners, and one or more persons as special partners, by signing a certificate stating: 1. Name under which the partnership is to be conducted. 2. General nature of the business intended to be transacted. 3. Names of all the partners and their residence, which are general and which are special. 4. Amount of capital each special partner has contributed. 5. Periods at which such partnership will begin and end. Certificate must be acknowledged by all partners and recorded in the office of the recorder of the county in which the principal place of business is situated, and if partnership has places of business situated in different counties, a certified copy of such certificate by the officer in whose office it is recorded, must be recorded in every county in which it has a place of business. An affidavit of each partner, stating the sums specified in the certificate of partnership as having been contributed by each of the special partners, then actually and in good faith paid, must be filed in the same office with the original certificate. Such certificate must be published in a newspaper printed in the county where original certificate was filed, and if no newspaper is printed in such county, then in a newspaper in this State published nearest there. Such publication must be made once a week for four successive weeks, beginning within one month from the time of filing the certificate. In case such publication is not so made, the partnership must be deemed general. Every renewal or continuance of a special partnership must be certified, recorded, verified, and published in the same manner as upon its original formation. General partners only have authority to transact business. Special partners may at all times investigate the partnership affairs, and advise his partners and agents as to management. Special partners may loan money to the partnership and take security therefor, and as to such loans have the same rights as other creditors. In case of insolvency of the partnership, all other claims which he may have against it must be postponed until other creditors are paid. General partners may sue and be sued alone. Special partner may not withdraw any part of the capital invested during continuance of partnership, but may receive such lawful interest and such proportionate profits as may be agreed upon, if not paid out of the capital invested, and is not bound to refund same to meet subsequent losses. If special partner withdraws capital he becomes a general partner. General partners are liable to same extent as in general partnership. Special partner is not liable for debts of partnership beyond amount contributed.

Power of Attorney. Powers of attorney for grants of real estate and to execute a mortgage must be in writing, subscribed, acknowledged or proved, certified and recorded as other instruments affecting real property. Powers of attorney which have been recorded must be revoked by revocation in writing, acknowledged, proved, certified, and recorded the same as original power.

Probate Law. Probate courts have jurisdiction to open and receive proof of wills and admit them to proof; to grant letters testamentary and guardianship and revoke same; appoint appraisers of estates, compel executors, etc., to render accounts; order sale of property of estates and minors; order payment of debts due from estates, order and regulate distribution of property or estates; compel attendance of witnesses and production of all instruments pertaining to estates and property of minors, and make such orders as may be necessary to exercise all powers conferred. Proceedings of this court are construed the same as courts of general jurisdiction and like force given to its records.

Protost. (See *Notaries*.)

Records. All deeds, mortgages, real and chattel, and instruments affecting the title to lands must be recorded. Inventory of the separate personal estate of a married woman when recorded, becomes *prima facie* evidence that the property therein enumerated is her separate property. Judgment empowering a married woman to act as a sole trader must be recorded in the county recorder's office. In case of levy of attachment upon real estate, a copy of the writ, with a copy of the notice of levy attached thereto, must be filed in the office of the county recorder.

Redemption. The defendant or any one interested in the property, whether as owner or lien holder, may redeem after sale under decretal or execution sale, within one year from date of sale. In case of tax sales, the owner may redeem in three (3) years. Any subsequent lien holder may redeem the property upon which he has a lien, at any time after the prior lien becomes due.

Replevin. Action of, must be brought within three years from time it accrues. Plaintiff may sue for the possession without claiming immediate possession, or he may claim immediate possession at time of commencing suit or afterward. Affidavit showing that plaintiff is the owner, the detention, the unlawfulness of the detention, etc., and bond with sureties required to obtain immediate possession. Defendant may execute undertaking, with approved sureties, for the retention of the property, and that it will be forthcoming, subject to the order of the court in which the action is pending, and thereupon retain the possession of the property involved.

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

Security for Costs. Security for costs may be required.

Service. If made by a private party, service must be proved by affidavit of the party serving, stating the time, and place, and manner of service. If by an officer, proof is made by his official certificate. Writs of summons in district court must be made ten days, if made in the county in which the action is pending, or twenty days if made in the judicial district, but outside of the county in which the action is brought, and forty days if outside the judicial district.

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 January, 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 three years.

Testimony. (See *Evidence*.)

Transfer of Corporation Stock. Shares of stock are personal property and may be transferred by indorsement by the signature of the proprietor, his attorney, or legal representative, and delivery of such certificate; but such transfer is not valid except between parties thereto, until same is entered upon the books of corporation, so as to show name of parties by and to whom transferred, the number and designation of shares, and the date of entry. Corporations may, by by-laws, provide that no transfer of stock shall be made upon its books until all indebtedness to the corporation of the person in whose name the stock stands is paid.

Trust Companies. (See *Guaranty Companies*.)

Warehouse Receipts. No statutory regulations.

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 BROS., JARVIS & SAMPLE, 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 or proof of real estate instruments may be before one of the following courts or officers: 1. Within this State, master, notary, justice, United States commissioner, county clerk; or court of record, judge, justice, clerk, or deputy of such court. A justice of the peace must add certificate of the county clerk if land is outside his county. 2. Outside this State, a justice, notary, master, United States commissioner, commissioner of deeds, mayor, county clerk; or judge, justice, clerk, or deputy of any United States court; or any judge, justice, clerk, deputy, prothonotary, surrogate, or registrar of supreme, circuit, superior, district, county, common pleas, probate, orphans, or surrogate's court of any State, territory, or dependency. In any dependency may be also before a commissioned military officer; justice or master must attach certificate of court clerk. 3. Outside the United States any court of any republic, dominion, state, kingdom, empire, colony, territory, or dependency having seal, or judge, justice, or clerk thereof, mayor or chief officer of city or town having seal; notary, commissioner of deeds, ambassador, minister, secretary of legation, United States consul, vice or deputy consul, commercial or consular agent with official seal, or before any officer authorized to take like acknowledgments or administer oaths to prove deeds. If court or officer have no seal he shall add certificate of ambassador, minister, secretary of legation, consul, vice or deputy consul, commercial or consular agent residing there showing such court or officer was duly created or selected and acting as such at the time.

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 personality; 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 larger counties where probate courts are established. Six weeks notice must be given for proof of claims. Claims not presented within one year from date of letters shall be barred unless creditors find other estate not inventoried or accounted for within that time. Infants, persons of unsound mind, persons without the United States in the employ of the United States or of this state have one year to exhibit claim after disability removed. Administrator, executor, guardian, conservator or trustee who fails to pay over is guilty of larceny.

By statute (1905) administration of intestate estate is granted, 1st, to surviving husband or wife, 2d, to child, 3d, to father, 4th, to mother, 5th, to brothers, 6th, to sisters, 7th, to grandchildren, 8th, to next of kin, 9th, to public administrator or any creditor. A relative entitled to administer may nominate a competent person to be appointed in his or her stead. Preference and right to nominate must be exercised within sixty days, otherwise public administrator shall act. When several are equally entitled to administer, the court may select preferring relatives of whole to those of half blood. Where intestate is non-resident and where there is no resident widow, husband, or next of kin entitled to share, the public administrator shall act. In cases of contest and liability to waste, loss or embezzlement, the public administrator shall administer until such contest is determined. When heirs all reside in this state and the estate is solvent and without minor heirs, and the parties in interest desire to settle estate without administration, this law (1905) shall not apply. No non-resident shall act as administrator or executor.

Trusts in Probate. Any probate court, and the county court in counties where there is no probate court, has original jurisdiction to supervise and control all testamentary trusts created by original wills probated in such court, and may appoint and remove trustees, issue letters of trusteeship, fix bonds, settle accounts, having full chancery powers; also power to order sale of real estate to pay legacies or other charges made thereon by testator and to make distribution if found necessary or expedient.

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 subpoenaed, 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 whatever sum shall 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 after the three months' notice and a majority of creditors, in number and amount, but debtor remains

liable for his indebtedness. No assignment of wages or salary shall be valid unless in writing and acknowledged in person before a justice and entered on docket and within three days a copy be served upon the party owing the salary or wages; and if by a married person assignment must be signed and acknowledged by both husband and wife. Assignment void if to secure debt tainted with usury. Assignment of wages to be earned in whole or in part more than six months in the future is void. Enforcement of unlawful assignment may be enjoined by assignor or employer.

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." A banker, officer, or person doing banking who receives deposits knowing concern to be insolvent shall, if deposit be lost, be fined double the sum lost and may be imprisoned one to two years.

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 Acknowledgments.)

Corporations are formed under the general statute for lawful purposes except banking, insurance, real estate, brokerage, railroads, and money-lending; separate acts provide for these. At least one-half of capital stock must be reported paid in, and also what disposition has been made of that not paid in, before charter issues. Stockholders vote in person or by proxy, each share one vote; shares not less than \$10 or more than \$100; cumulative voting allowed; final certificate or charter to be recorded in company's own county; may hold only necessary real estate; directors not less than three nor more than 11; make by-laws and control business; no stock liability except for unpaid par value; directors and officers who assent to indebtedness exceeding amount of capital stock are liable for the excess; stockholder may examine books; certificates assignable in blank and pass by delivery; stock is personality and may be attached or taken in execution unless certificate has been sold or pledged. Every corporation except building and loan, railroad, banking, and insurance shall in each February report to secretary of state location of office, names and residences of officers, when terms expire and nature of active business. Failure to do so is *prima facie* evidence of being out of business and secretary shall record cancellation of charter, and shall file annually with recorder of each county, list and particulars of such reports, and all cancellations; may be reinstated within one year by paying \$20, and making proper reports to date; charters already forfeited of corporations not for pecuniary profit, including religious corporations, may be restored if proper application is made before March 1, 1906.

A *Foreign Corporation* other than insurance, building and loan, and surety company, wishing to operate in this State shall make sworn application to secretary of state, naming its proposed business, amount of capital stock and whether it is to operate in any other State or country, the proportion of its business to be done in this State, what assets and value thereof will be used in this State, the amount paid in upon its capital stock and if any stock is not paid in, what disposition is to be made thereof; names and residences of president, secretary and treasurer, location of office, name of attorney in fact who can be served with summons, and if required by secretary of state, names and residences of all stockholders. Shall file copy of charter or certificate. Applicants

may be interrogated by secretary of state as to character of business, capital stock, proportion of business to be done in this State, and the proportion and location of its business in other States or countries, and must be answered on oath. It can do no business which may not be done by domestic corporations nor shall it exceed provisions of its own charter; must make reports from time to time as required of domestic corporations; hold only necessary real estate; cannot encumber its property in this State to injury of resident creditors; no mortgage made by it shall take effect as against citizen creditors until all liability to citizens shall be fully paid, which were owing at the time of recording mortgage. Upon the proportion of its stock represented by its property and business in this State it shall pay same fees as domestic corporations. Secretary of state may at any time interrogate president, secretary, director or manager as to business being transacted, location, names and residences of directors and officers, amount paid in and what has been done as to stock not paid in, and failure to answer on oath within ten days, authority to do business may be revoked; delinquent may be fined \$1000 to \$10,000 and cannot collect any claim by suit.

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. [Note.] A comprehensive statute of 67 sections was passed (1905) creating a municipal court for Chicago, with twenty-eight judges, intended to take the place of the present justice courts, but with much additional jurisdiction. As the first election of judges does not take place until November, 1906 and the law cannot go into practical operation earlier than the win of that year, it seems unnecessary to digest the law at present.

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

Depositions. The testimony of any witness residing within this State more than 100 miles from the court, or not residing in this State, may be taken by the party desiring to use the same, under a commission, upon written interrogatories. The deposition of a non-resident witness may be taken on oral interrogatories, upon giving ten days' notice, and one day for every 100 miles traveled from the court to place of taking same. When the notice has been served for taking the deposition of a non-resident witness on written interrogatories, the adverse party may, upon giving three days' notice, have a deposition issued to take the deposition upon oral interrogatories. Commission may issue to any judge, master in chancery, notary or justice, or to any competent or disinterested person as commissioner. Where deposition is taken on written interrogatories, neither party, his attorney, nor other person interested, is allowed to be present, nor to dictate or write any deposition. When a party, having given notice to take depositions upon oral interrogatories, shall fail to take the same, and the opposite party shall attend either in person or by attorney, he shall be entitled to \$2 per day for each day of such attendance, and to 6 cents for every mile necessarily traveled in going and returning.

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 curtesy 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 is 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 appraisal, 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 \$15.00 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 property exemption is allowed when the debt is for the wages of laborer or servant. Wages are preferred in case debtor is closed by legal proceedings. Wages earned outside of State exempt, where cause of action arose out of State, unless debtor is personally served with process in the State.

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. Wages or salary of any officer or employé of any county, city, town, village, school district, or any department of either thereof, is liable to garnishment. Officer served must answer and deposit amount shown due.

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, 5 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 prefer any creditor.

Married Women. A married woman may sue, be sued, possess her own earnings, contract, incur liabilities, purchase, sell and hold personally, and own real estate to same 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. Mortgages and trust deeds with power of sale must be foreclosed in chancery. No sale allowed under such power. They are exempt from defense to the same extent as the notes secured by them and in hands of innocent persons. **Chattel Mortgages** shall be acknowledged before a justice or the county judge of county where mortgagor resides, or before the clerk or deputy of any municipal court; if mortgagor is non-resident, then before any officer authorized to acknowledge deeds; in counties of more than 200,000, if the mortgagor is resident of state, he shall acknowledge before a justice of his town or precinct, or if there be none, then before clerk or deputy of municipal court, or, if no such clerk or deputy, then before county judge. If mortgagor is resident of this state the official shall docket names of parties and description of property.

Negotiable Instruments. Days of grace are abolished. January 1, February 12 and 23, May 30, July 4, first Monday in September (Labor Day), December 25, Thanksgiving, and Saturday afternoons in cities of 200,000 or over, are legal holidays, and 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, 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.

Sales in Gross—Fraud. If a merchant sell his entire stock, or any portion thereof in bulk and out of the usual course of trade, it will be presumed fraudulent and void as to his creditors, unless he and the purchaser, at least five days before the sale, make full inventory showing quantity and cost prices, and unless purchaser make explicit inquiries of the seller as to the names and residences of all seller's creditors and amount due to each, and unless purchaser notify each creditor personally or by registered mail of such cost price and of his proposed purchase price. The seller shall, five days before such sale, fully answer in writing all such inquiries.

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 one year 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, & DAVIDSON, 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 are 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 where assets shall after death 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 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 empowered 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. Aliens, whether resident or not, may own real estate not exceeding 320 acres; lands in excess of that amount they must convey within five years or suffer escheat as to such excess.

Appeals. Except in a case where the amount in controversy, exclusive of interest and costs, is less than \$50.00, 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, Private. Act of 1905 regulating private banking applies to anyone who uses the word "bank" in connection with his business; \$10,000 must be kept invested in the business, and the real estate, furniture and fixtures must not exceed one-third of the whole capital. Semi-annual reports to auditor of State must set forth copy of articles of co partnership; at least one partner must be a resident; the report must show name of the bank, place of business, amount of capital paid in, net worth of each member, and names of officers and employes in charge. The aggregate net worth of partners must be double the amount of stock invested. When the stock has been paid in and reported under oath the auditor issues a charter authorizing the bank to do business. A copy of the semi-annual report shall be published. In the bank shall be posted a list of the partners. Depositors have lien on assets. Service of process on officer in charge gives jurisdiction as against all persons interested.

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 visitatorial 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. No grace is allowed. 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 come 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. Saturday afternoon is a legal half holiday in the city of Indianapolis, and may be made so by act of bankers in other cities of over 35,000 population.

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 (*see Aliens*), Indian, negro, or 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 abolished; a covenant or agreement of any person leaves heirs and devisees answerable thereon 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 which accepted the terms of the act of March 6, 1853, 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 employees. 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. By the act of 1901, foreign corporations are required to designate an agent in this State upon whom legal process may be served; to have an office where proper books of account may be kept; and to file with the secretary of State a certificate showing the amount of the company's capital employed in this State, and to pay a graduated fee to the State as a condition precedent to doing business in Indiana.

Costs. Non-resident plaintiffs are required to give security for costs. In many counties a rule of court forbids attorneys from going on cost bonds. In most cases, costs follow judgments.

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 before a justice of the peace 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 are no longer recognized.

Deeds must be dated, signed, sealed, and acknowledged. In a warranty, the efficient words are "convey and warrant"; in a quit-claim, "convey and quit-claim"; in a mortgage, "mortgage and warrant." They should be recorded in within forty-five days; but, between the parties, are good without recording. Subscribing witnesses are not necessary. (See *Acknowledgments*.) A married woman need not acknowledge apart from her husband. Where the grantee signs by his mark, it is the duty of the officer taking the acknowledgment to fully explain the contents and purpose of the deed; but his omission of that duty does not affect the validity of the deed. A form of conveyance provided by statute is as follows: A. B. conveys and warrants to C. D., for the sum of the following described real estate, to-wit: It carries full warranties. Like forms are used, inserting the efficient words as above, for quit-claims and mortgages.

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 sea. 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.

Descent. The real and personal property of any person dying intestate shall descend to his or her children in equal proportions; and posthumous children inherit equally with those born before the death of the ancestor. Children of deceased children take the share which would have descended to the father or mother; and grandchildren, and more remote descendants, and other relatives, lineal and collateral, inherit by the same rule, excepting that if the heirs are all grandchildren they inherit equally. Where there are no heirs as aforesaid, one-half of the estate goes to the father and mother as joint tenants, or to the survivor, and the other half to the brothers and sisters, and to the descendants of such as are dead, as tenants in common. If there be neither father nor mother, the brothers and sisters, and the other descendants, take the estate as tenants in common; or, *per contra*, the father and mother as joint tenants of the survivor. Kindred of the half blood inherit equally with those of the whole blood in property purchased by the ancestor; otherwise, as to property acquired by gift, devise, or descent. Illegitimate children inherit from the mother same as if they were legitimate, and *vice versa*. Tenancy by the curtesy and dower are abolished, and widows take one-third of the real estate in fee simple, unless the property is worth over \$10,000, in which case, as against creditors, she takes one-fourth only; and where the real estate is worth over \$20,000, one-fifth only as against creditors, but as against other heirs she takes one-third in fee simple, regardless of value, except where there is but one child, in which case each inherits one-half. A second or subsequent wife, however, takes only a life estate in her husband's lands, if there be a child or children by a previous marriage, and none by such widow. Other special provisions of the statute are too extensive to set out. (See R. S., 1894, secs. 2622-2672.) The estate of a person dying intestate without kindred capable of inheriting will escheat to the State for the support of the common schools.

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. By act of 1903 separation from bed and board for a limited time may be decreed.

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. 6. Sale of goods exceeding \$50 in value, unless part payment or part delivery be made.

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 \$35, 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. Foreign judgments must be sued on as any other claim.

License. Traveling merchants and peddlers, not residents of the State, and stock and exchange brokers are required to pay license. A license is required to entitle one to hunt or fish outside the township of his residence.

Liens. Liens are granted by statute to attorneys; to persons holding claims against watercraft on account of supplies furnished or work done; also for demands for damages arising out of freight contracts, or for willfulness or negligence of the master, owner, or agent, or out of any contract relating to transportation, and for injuries to persons or property; also to employees of any corporation as against any of its corporate property or earnings for labor done; also to keepers of livery stables and all persons engaged in feeding stock, for the feed and care bestowed upon the same; also to contractors, sub-contractors, mechanics, journeymen, laborers, and all persons performing labor or furnishing material or machinery for erecting, laboring, repairing or removing any house, mill, manufactory or other building, bridge, reservoir, system of water-works, or other structure, known as a mechanic's lien; also to bailees and tradesmen for their valid and reasonable charges in the construction, repair, or alteration of

any article of value; also to the bailee or keeper of personal property for any feed or care bestowed by him upon such property; also to forwarding and commission merchants on goods which may have remained in store for one year or more. The attorney's lien is had by his entering in writing upon the docket or record where the judgment is entered his intention to hold a lien thereon, together with a statement of the amount of his claim, such entry to be made at the time the judgment shall have been rendered. Liens against watercraft are held to attach to the boat, vessel, or watercraft, apparel, tackle, furniture, or appendages, including barges and lighters belonging to the owners of the boat, vessel, or watercraft, and used therewith at the time the action commenced, and this lien may be enforced by a complaint setting forth the particulars of the attachment, the amount due, the fact that a demand has been made upon the owners, master, clerk, or consignee, and payment refused, verified by the claimant's affidavit or that of someone in his behalf, and the claim is enforced in the same manner as in attachment proceedings. Labor liens against corporations are acquired by the employe's filing, in the office of the Recorder of the county where such corporation is doing business, notice of his intention to hold a lien upon the corporate property or earnings for the amount of his claim, this notice to set forth the date of such employment, the name of the corporation, the amount of the claim; and it may be enforced at any time within six months by filing a complaint in the circuit or superior court as in mechanic's lien cases. The lien for feeding stock accrues only to persons who are engaged in the business of feeding animals. Mechanics' liens can now be taken by filing a notice of the intention to hold a lien upon the real estate and improvements of the debtor, the notice to describe the real estate, and to be filed in the office of the Recorder of the county where the real estate is situated within sixty days from the rendition of the last service or the furnishing of the last materials used in the improvement. Preliminary notice or warning at the time the work is done or the material furnished is no longer required. It must be shown that the materials for which a lien is claimed were purchased for use in the building, and were used in the construction of it, and the lien is barred unless action is brought within one year from the date of its record. So far as the real estate is concerned, the lien takes precedence of all subsequent liens, and as against prior mortgagees or lessees of the property, it may be enforced upon the improvements by an order directing the sale of the same and their removal from the realty. Sales made under a judgment of foreclosure are made without relief from valuation or appraisal laws. Where a number of lien holders have claims against the same property their rights may be adjudicated in one action, in which, upon the sale of the property, the proceeds are pro-rated amongst the various lien holders. Mechanics' liens carry with them the right to a reasonable attorney's fee, to be paid by the debtor out of the property covered by the lien as part of the judgment in the suit. Provision is made by statute for holding the owner of the property personally liable for the amount of such liens by giving him notice in advance, and his liability is limited to the amount due from him to the principal contractor at the time the notice is received. Except in cases of this kind there shall be no personal judgment rendered against the defendant in proceedings to foreclose. Tradesmen to whom articles of value have been entrusted for construction, alteration or repair, may after six months from the time charges for the same become due, sell the articles so entrusted to them, or so much thereof as is necessary to pay charges, the sale to be at public auction for cash, or on reasonable credit with sufficient sureties in the case of sale on time, and notice of sale shall be given by posting advertisements thereof in three public places in the city or township where the tradesman resides, one of which shall be in some conspicuous part of his shop or place of business, and if the article be valued at \$10 or more, by publishing the same three weeks successively in a newspaper in the county, if any. Such a sale, if made in accordance with the statute, passes a complete title to the property. The statute requires the proceeds of such sale, after the payment of all charges, including the charges for publication and notice, to be deposited with the treasurer of the county, and receipt for the same be taken and held subject to the order of the person legally entitled thereto. Where the debtor has died, six months must expire from the time of his death before such a sale can be had. Forwarding and commission merchants having liens upon goods which have remained in store for one year or more may proceed to advertise and sell at public auction so much thereof as may be necessary to pay the amount of the lien and expenses. Vendors' liens on real estate are a first lien against the same as against a prior judgment. Landlords have a lien upon crops, which may be enforced by the sale of such crops in the same manner as the lien of a chattel mortgage containing a power to sell. Any one holding a valid lien against property for a claim which has been paid may be compelled to release the same under penalty of paying to the party injured \$25, together with his reasonable attorney's fees. Judgments rendered in any county in the State are a lien upon the real estate situated in such county for a period of ten years from the rendition thereof, and judgments rendered in the federal courts are a lien upon any real estate situated in the State for the same period. Provision is made by statute, however, for the filing in the county where the real estate is situated of a transcript of any judgment rendered in the United States courts. The office of the clerk of the circuit court in each county contains a public record known as the *Lis Pendens* record, in which notice of the filing of complaints to enforce liens are required to be recorded, and also in cases where real estate is seized by attachment or execution. Unless so recorded the bringing of suits does not operate as a constructive notice.

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 dam-

age 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 \$300, 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 \$30,000, and one-fifth, if above that amount. She also takes a child's interest in the personality 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 personality 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.)

Notaries are appointed by the Governor for four years and must give bond of \$1,000. The date of expiration of commission must be affixed to certificates. While appointed to act in one county they may perform their duties throughout the State.

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.

Partnership, Limited. Limited partnerships are formed by the parties signing a certificate giving the name under which the partnership is to be conducted, and the names and places of residence of the general and special partners, the amount of capital stock which each partner has contributed, the general nature of the business, and the time of the commencement and termination of the partnership. The certificate must be acknowledged before a justice of the peace, and recorded in the county where the business is to be conducted and notice given by six successive weeks' publication in a newspaper.

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.

Records. Deeds and mortgages of real estate are required to be recorded in the office of the recorder of the county where the land lies within forty-five days from their execution and delivery, to be valid against any other person than the grantor or mortgagor, his heirs, or persons having notice thereof. As between the original parties thereto, they are good at all times, without regard to record. Chattel mortgages must be recorded in ten days from execution. Recording is not compulsory as between original parties to an instrument. Wills are recorded in the clerk's office of the county where probated, and also, in some cases in the recorder's office. Administrators must, in cases where land descends, file statement as to the descent and the names of heirs, which statement must be recorded in proper county. Decree and judgments settling title to real estate must be recorded in the recorder's office in the proper county.

Redemption. Real estate sold on execution may be redeemed at any time within one year from the date of sale by payment of the purchase money with 8 per cent interest. Redemption may be had from tax sales at any time within two years, by paying to the county treasurer for the use of the purchaser the amount of purchase money named in the certificate with costs of sale, and if redeemed within six months 10 per cent additional. If redeemed after six months and within twelve months, 15 per cent, and after twelve months and within two years 25 per cent, together with all taxes that have been paid thereon and 6 per cent interest on the amount thereof. At the end of two years the purchaser is entitled to a deed, and the owner has no absolute right of redemption. Persons under disability, such as infants, insane persons, and married women, may redeem lands which have been sold for taxes within two years after the disability ceases.

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.

Revision. A republication of Revised Code, 1852 (as amended), by Gavin and Hoard, with a third volume comprising all public acts to 1870, by Edwin A. Davis, uniform with G. & H. 1870. A republication of the Revised Statutes by Edwin A. Davis, condensing the foregoing three into two volumes, with addition of laws since adopted, was issued 1876. The last compilation by legislative authority, is that of 1881, known as the Revised Statutes. Elliott's Supplement to R. S. Ind. includes Acts 1883 to Acts 1889. A comprehensive Annotated Edition of R. S. Ind. in two volumes was published by E. B. Myers & Co. in 1888. A third volume was issued in 1892, covering the statutes and annotations up to that year. Com-

pilations (by private enterprise) are Indiana Annotated Statutes, by Harrison Burns, in four volumes, and Horner's Annotated Statutes, by Frank A. Horner, both embracing all general laws in force January 1, 1898; Burns' Second Revision (1901). Works of reference are Thornton's Statutory Construction (1887); Thompson's New Indiana Citations (to 135 Ind. and 7 Ind. App., 1895); Thompson's Citations (to 155 Ind. and 24 App. 1901); Thornton & Ballard's Annotated Indiana Practice Code (1889); Elliott's Appellate Procedure (1892); Ewbank's Appellate Procedure (1900), and Burns' Digest, two volumes (1905).

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.

Warehouse Receipts. Public warehouses are divided into two classes, class "A," and class "B." Class "A" embraces all warehouses elevators, or granaries in which grain is stored in bulk, and in which grain of different owners is mixed together. Class "B" embraces all other places where property is stored for a consideration. Warehouse receipts are negotiable and transferable by the endorsement of the party to whom such receipts may be issued; and such endorsement is deemed a valid transfer of the property represented by such receipt, and may be either in blank or to the order of another. Every such endorsement is deemed to be a warranty that the endorser has good title and lawful authority to sell the property named in the receipt. No sale of grain stored which is not evidenced or accompanied by a transfer of the warehouse receipt given therefor, is valid as against the *bona fide* holder of such receipt. All warehouse receipts for property stored in public warehouses of class "B" must distinctly state on their face the brand or distinguishing mark on such property.

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.

Witnesses. Parties to or interested in a suit are competent witnesses, but insane persons, children under ten years of age, unless they understand the nature and obligation of an oath, physicians, attorneys, and clergymen, as to confidential communications, and husband and wife, as to communications made to each other, are incompetent witnesses. In suits in which an administrator or executor is a party, the opposite party is generally incompetent, and in suits by or against heirs of devisees, founded on a contract with the ancestor, neither party is a competent witness as to any matter which occurred prior to the death of the ancestor.

SYNOPSIS OF THE LAWS OF INDIAN TERRITORY

RELATING TO

BANKING AND COMMERCIAL USAGES.

(See *Oklahoma*.)

SYNOPSIS OF THE LAWS OF IOWA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by DALE & HARVISON, Attorneys at Law, Des Moines. (See *Card in Attorneys' List*.)

Accounts and Claims of. Statements of account, for use in court or for proof in the settlement of estates of deceased and in guardianship matters, must be itemized and verified. A statement of "balance," or "goods," or "merchandise" is not sufficient.

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 and the genuineness of his signature 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. The form of certificate is statutory. Acknowledgments taken elsewhere in the United States before any officer authorized to take acknowledgments in such State or territory, other than a clerk of the court or commissioner appointed by the governor, whose authority, official character, or signature needs no authentication, may be recorded and read in evidence only when 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. Whenever an action is commenced upon a lost, stolen or destroyed note, bond, bill of exchange, certificate of deposit, check or other evidence of indebtedness, upon demand of any defendant, the plaintiff must execute a good and sufficient bond to indemnify and save harmless the defendants in said cause. Actions on official bonds, (with some exceptions,) may be brought in the county in which such bond was filed and approved. 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.

Affidavits. Affidavits may be taken before any person authorized to administer oaths in the State where taken. If taken without the State of Iowa, the official character of the officer administering the oath should be evidenced in the same way as the official character of an officer taking depositions. (See *Depositions*.) Affidavits may be taken within the State for any lawful purpose, of one unwilling to voluntarily make an affidavit, by filing a petition with an officer authorized to administer oaths, who may cause the person to come before him and make affidavit. This proceeding is statutory and must conform strictly to the Statutes of Iowa.

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 to 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 itemized and 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 incorporators, 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 twenty 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 of 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, but said bank may loan not to exceed one-half of their capital stock to any person, corporation, company or firm on notes or

bonds secured by mortgage or deed of trust upon unincumbered farm land in this State, worth at least twice the amount loaned thereon; the limit of such loans must be 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 their 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.

Bills of Exchange. The negotiable instrument law recommended by the Interstate Commission on uniformity of law has been enacted and is now law in Iowa. Bills of exchange made and delivered prior to April 22, 1902, payable within the State of Iowa, except those payable on demand, are entitled to grace; all negotiable instruments executed after that date are payable at the time fixed therein without grace. Where grace is allowed, if the third day of grace fall on Sunday or on a holiday, demand must be made on the preceding business day. A provision for the payment of exchange, in addition to the amount of principal and interest, does not render a bill of exchange non-negotiable. (See *Days of Grace*.) An indemnifying bond may be required in an action on any negotiable paper or other evidences of indebtedness, lost, stolen, or destroyed. (See *Actions*.)

Bills of Lading. These are governed by the rules of the common law, there being no statutory provisions on this subject, except a criminal statute punishing false bills of lading or false affidavits or manifests, made with intent to deceive.

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 collateral 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.

Contracts. These are governed mainly by the common law. The statutory provisions with relation to purchases, sales, or mortgages of real and personal property, conditional sales of personal property, statutes of fraud and statutes of limitation being treated under their appropriate titles.

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. A corporation executes 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 incorporators 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, mutual creamery associations being exempted. The same fee must be paid upon renewal of a corporation after its original term has expired. 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 or renewal 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. (See *Collateral Securities; Transfer of Corporation Stocks.*)

Costs are taxed in favor of the successful and against the losing party to a suit; where each party is partially successful, there is an apportionment of costs. A sufficient tender kept good, and an offer to confess judgment sufficient in amount, will throw costs on to the opposite party.

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 5,000 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, alimony, and separate maintenance, and it has no probate jurisdiction. Transcripts 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 written consent of parties, \$300. The supreme court has only appellate jurisdiction and holds sessions at Des Moines, January to May, from May to September (less vacation), and from September to December.

Creditors' Bills. A suit in equity in the nature of a creditor's bill is permitted in this State in favor of a creditor, who has reduced his claim to judgment, for the purpose of subjecting real estate, fraudulently conveyed by the debtor, to the payment of such judgment. A statutory modification of this proceeding is also allowed to judgment creditors in certain cases to reach personal property.

Days of Grace. 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. A demand made on any one of the three days following the day of maturity of the instruments, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provisions of the negotiable instrument law, and the provisions of that law as to notice of non-payment, non-acceptance, and as to protest, shall be applicable with reference to such demand as though the demand were made in accordance with the terms of that law; but these provisions shall not be construed as authorizing demand on any day after the third day from that on which the instrument falls due according to its face. The uniform negotiable instrument law has been adopted in Iowa. The legal holidays for bank purposes are: Sundays, January 1st, February 22d, May 30th, July 4th, first Monday in September, December 25th, and any Fast or Thanksgiving day appointed by the President of the United States or Governor of the State. (See *Bills of Exchange.*)

Deeds. (See *Conveyances.*)

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 depositions. 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, and in the absence of a valid Will, the estate of one deceased 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. The limitation of actions to recover dower, where the conveyance was signed by only one spouse, and was executed prior to January 1, 1885, is stated elsewhere. (See *Limitations.*)

Evidence. Evidence is governed mainly by the rules of the common law. There are numerous statutory modifications which can not be satisfactorily condensed within the space we can devote to a synopsis of the law.

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 a 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; thereafter the owner has the exclusive right of redemption.

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, \$300; 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.

Fidelity Companies. (See *Guaranty Companies.*)

Foreign Corporations. With few exceptions foreign corporations authorized to do business in one State of the Union may also do business in the State of Iowa, but in most cases copies of their articles of incorporation must be filed with the secretary of the State. Subsequent amendments must be similarly filed. There are certain special provisions as to fire and life insurance, fidelity or guaranty, building and loan, railroad, and a few other corporations. (See *Corporations.*)

Foreign Judgments. These judgments can only be enforced by a suit thereon brought in a court of proper jurisdiction within the State of Iowa, and are subject to the same defenses as at the common law, such as want of jurisdiction of the court rendering it, no proper service of notice, or process, payment, etc. If judgment is obtained thereon, the judgment is thereafter enforced as a domestic judgment.

Fraud. In actions for fraud, heretofore solely cognizable in a court of chancery, the cause of action shall not be deemed to have accrued until the fraud complained of shall have been discovered by the party aggrieved by the exercise of due diligence. 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.*)

Guaranty Companies. Under the statutes of the State of Iowa these are generally termed "fidelity" companies. They may be accepted as sureties upon public and legal bonds, and may be released from lia-

bility like private persons. Information as to the method of obtaining a certificate from the auditor of State necessary to entitle them to do business within the State of Iowa, can be obtained by communicating with that officer.

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. Otherwise, a holiday is not *dies non juridicus*, a legal day for court purposes.

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

Injunctions may be granted originally, or as auxiliary to the main case at law or in equity, upon filing a bond in an amount to be fixed by the court or a judge thereof. The general rule is, that injunction will not be granted except to restrain and prevent irreparable injury.

Insolvency. (For *Insolvency*, see *Assignments and Insolvency*.)

Insurance Companies. Foreign insurance companies, whether stock or mutual, before doing business in the State of Iowa must obtain a certificate from the auditor of State, which certificate must be renewed annually on the 1st day of March. They must also file annual reports upon blanks furnished by that officer and must authorize the service of notice or process upon the auditor of State, such service to be deemed personal service within the State upon such company. Full particulars as to these requirements can be obtained from that officer.

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, or upon which a levy is made after ten or before twenty years from the date of the judgment, but this lien dates only from the time of the levy. 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.

Jurisdiction. Judgments rendered without jurisdiction of the subject matter are void. Those rendered without jurisdiction of the person are generally voidable. As the district court of this State is a court of general original jurisdiction, questions of jurisdiction are mainly avoided by bringing actions in that court; in all doubtful cases this should be done. The question of jurisdiction of subject matter can be taken advantage of at any stage of the proceeding or by collateral attack, and, in some cases, this is true of jurisdiction of the person, but the rule in this State is that an appearance in a case can not be specially made to raise the question of jurisdiction of the person, and if an appearance is made, this confers jurisdiction of the person.

License. In a few cases, such as peddlers, licenses are issued by the State. Otherwise licenses are only issued under ordinances of cities and towns, passed under statutory authority. In the latter cases, the ordinances of the particular city or town in question and the statutory authority must be consulted.

Liens. These are mainly created by statute and are enforceable in equity. In a few cases, and under peculiar circumstances, equitable liens on real estate are established and enforced in equity.

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. All actions to foreclose mortgages, executed prior to January 1, 1885, are barred one year from and after July 4, 1906, unless the record of the mortgage shall show, or unless, within that year a notation made on the margin of the record of the mortgage, by the holder thereof, shall show that such debt is not yet more than ten years past due. Where a conveyance was executed prior to January 1, 1885, by one spouse, in which the other spouse did not join, the spouse not joining, or his or her representatives, shall be barred from the right to bring an action to recover dower in the lands so conveyed, unless such action shall be commenced within one year from and after July 4, 1906. If such right of action has not accrued on that date, then a right of action shall nevertheless be barred within two years from said date unless the spouse claiming dower shall, within that time, file a notice and affidavit of such claim to dower in the recorder's office of the county where the land is situated. Time of defendant's absence from this State is deducted in computing the time of limitation. Where, by the death of the party to be charged the bringing of an action against his estate shall have been delayed beyond the period provided for by Statute, the time within which an action may be brought against his estate is extended for six months from the date of the death of decedent. 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.

Mines and Mining. The right to mine is not limited or controlled by statute. Mines are subject to inspection and are governed by stringent regulations concerning proper ventilation, sufficient propping of the superstructure, payments of the miners at certain periods, and in opposition to truck stores. These provisions are quite voluminous and must be carefully examined by those engaging in the mining business.

Minors. 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 and acknowledged by the parties creating the lien and recorded same as deeds are foreclosed by equitable action. The wife should join in the instrument, except mortgages for purchase money, and mortgages upon non-exempt personal property. The mortgagor has one year in which to redeem real estate after execution sale, except as stated under the sub-title "Executions." 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*.) The limitation of actions to foreclose mortgages, executed prior to January 1, 1885, is stated elsewhere. (See *Limitations*.)

Notaries. These officers are appointed and commissioned by the Governor, upon filing a bond and paying the fee required by law. They have power to administer oaths, take depositions, and the usual power of such officers concerning presentation, demand, protest, and notice of protest of negotiable commercial paper.

Notes and Bills of Exchange. Damages allowed on protested paper, 3 to 5 per cent. To hold indorser note must be duly presented, payment refused, protested, and indorser notified, unless waived in writing. 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. (See *Bills of Exchange and Days of Grace*.) The requirements for an indemnity bond in an action on lost negotiable paper, etc., are stated elsewhere. (See *Actions*.)

Nursery Stock. The importation into Iowa of nursery stock is prohibited unless accompanied by the certificate, required by law, to the effect that it is free from any dangerously injurious insect or plant disease.

Partnerships, Limited and Special. Limited and special partnerships are permitted, but not favored. The statutes on this subject must be strictly complied with. A certificate showing prescribed details and particulars of the partnership must be signed, acknowledged, and filed in the office of the clerk of the district court of the county in which the principal place of business is situated, to be there recorded and similarly recorded in each county where such partnership has a place of business. There must be an affidavit that the amount stated in the certificate has been actually contributed by each separate partner. Publication must be made of the certificate and affidavit for six weeks in two newspapers in each senatorial district in which the partnership is to transact business.

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.

Receivers. In distributing property in the hands of a receiver there shall be paid in the following order: (1) Taxes or debts due the United States; (2) Taxes or debts due the State; (3) Debts owing to employees for labor, not exceeding \$100.00.

Records. All instruments conveying or creating liens upon the real or personal property, all conditional sales and articles of adoption of a minor child, must, after having been signed and acknowledged, be recorded in the office of the recorder of deeds in the proper county or counties where the property conveyed is situated, or the minor child is. Unless so recorded, such instruments are invalid as to a bona fide purchaser or encumbrancer or as articles of adoption.

Redemption. Redemption from a sheriff's sale of real estate, whether sold under a general or special execution, may be made by a creditor who has a lien on the property sold, at any time after six months from date of sale by paying to the clerk of the court the amount provided by statute, being, generally, the amount of the purchaser's bid, with interest at the same rate that the judgment bears. Within the time named creditors may redeem from each other. After nine months, and within one year from the date of sale the owner of the real estate sold has the exclusive right to redeem from such sale, and, in so doing, the debtor must pay off the claims of judgment creditors, who have made redemptions as hereinabove stated, in addition to the amount originally bid.

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.

Service. Service of original notice of actions commenced, and a large number of other papers required by law to be served in the same way, is made by reading the notice or paper to be served to the particular person and delivering to him a copy of such notice or paper, but he can waive either the reading or the copy or both. In cases affecting the title to or liens upon real estate, divorce, and some other cases, publication service may be made by publishing the same in a newspaper for four consecutive weeks, the last publication being ten clear days before the first day of the next term of court.

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.

Testimony. (See *Evidence and Depositions.*) All testimony, not taken by deposition, must be introduced by oral examination and cross-examination in open court.

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 Companies. Domestic trust companies are organized under and governed by the general corporation laws of the State. Foreign trust companies doing business in this State are governed and controlled by the general statutes concerning and relating to foreign corporations doing business in Iowa. (See *Corporations.*)

Trust Deeds. They must be executed and foreclosed, and considered as mortgages. That is, the power of sale on notice is abolished, and they must be foreclosed by equitable action.

Wages. Assignment of exempt wages, (three months' earnings), by the head of a family are invalid, unless evidenced by a written instrument, and if the assignor is married, it must be by a joint instrument, signed and acknowledged by both husband and wife. Such assignments take priority from the date of notice thereof to the employer.

Warehouse Receipts. Any person, firm, or corporation desiring to issue elevator or warehouse certificates (or receipts) must file a written declaration with the recorder of deeds in the county where his or its elevator or warehouse is situated, setting forth the particulars required by statute, which declaration must be recorded by the recorder of deeds. Thereafter he or it may issue certificates for commodities actually in such elevator or warehouse, but the certificates must conform to the statutory provisions. A register of certificates issued must be kept by the parties issuing them. A violation of these provisions, issuing double certificates for the same property, or selling or encumbering property included in any warehouse receipt, is made a criminal offense. There is also a criminal statute against issuing false warehouse receipts or certificates.

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 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 besides 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 probate 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.*)

Accounts and Claims. Accounts and claims draw interest from maturity at the rate of 6 per cent. In actions on accounts if the account is verified it is *prima facie* evidence of its correctness, and claims against estates must be verified, showing that the account is correct, and that there are no setoffs or counter claims. Open accounts are barred in two years.

Acknowledgments. (See *Deeds.*)

Actions. Civil actions are begun in the courts by filing a petition and praecipe 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-resi-

dents, 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. Law prohibiting aliens from inheriting or holding real estate, repealed 1901. (See *Foreign Corporations.*)

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.

Arrest. A defendant may be arrested in a civil action upon filing an affidavit with the clerk of the court that he has removed or begun to remove his property out of the jurisdiction of the court with intent to defraud his creditors; or has begun to convert his property into cash, for the purpose of placing it beyond the reach of his creditors; or has property which he fraudulently conceals; or fraudulently contracted the debt. The affidavit must contain a statement of the facts claimed to justify the belief in the existence of one or more of the above, and a bond must be furnished that the plaintiff will pay damages in case the order of arrest is wrongfully obtained.

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 \$10,000. 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 additionally liable for a sum equal to the par value of stock owned and no more.

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

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 two years after same was filed, unless within thirty days next preceding the expiration of said year, and each two years 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 but remain in force without the renewal affidavit required in 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 one-tenth of one per cent of its authorized capital stock upon the first \$100,000; one-twentieth of

one per cent on the next \$400,000 and for each million or major part thereof of above \$500,000, \$200, 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 charter may also provide that no person shall ever hold or vote, as owner or otherwise, more than a certain minority of the stock to be stated in the charter. 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 three directors, three of whom must be residents of the State. Directors must be stockholders but with a few exceptions no requirement is made as to the number of shares they must own. 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 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. 6. 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; failure to file this report within ninety days from time fixed works a forfeiture of the charter; 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. The capital stock can be increased to an amount not exceeding three times the original amount fixed in the charter. Capital stock may also be decreased. 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. Laws relating to collection of double liability of stockholders (except banks and trust companies). Repealed chap. 152, Laws 1903. Suits may be brought by and against corporations the same as individuals. 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.

Costs. (See *Actions*.)

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*.)

Creditors' Bills. Creditors may bring an action in the nature of a creditors' bill to marshal assets or set aside fraudulent conveyances as in other States.

Days of Grace. Abolished.

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 acknowledged

ment 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 living issue of prior 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 and Distribution.*)

Evidence. (*See Testimony.*)

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.

Foreign Corporations. A foreign corporation doing business in this State must file a certified copy of its charter with the secretary of State and pay to the State treasurer the same fees as a domestic corporation, when it receives a certificate authorizing it to do business and is then subject to substantially the same provisions, judicial control, restrictions, and penalties as a domestic corporation. Annual statements must be filed in February. If a foreign corporation fails to file with the secretary of State the statement required by law within ninety days after the time provided for, its right to do business in the State is thereby forfeited. There are many statutory provisions relating to foreign insurance and building associations impossible of concise statement. A foreign corporation not engaged in business in the State has the right to acquire property by mortgage or otherwise and enforce liens by action but before it can enforce such liens it must pay to the secretary of State a fee of \$100 and file a written consent to be sued as is provided for corporations doing business in the State.

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.

Guaranty Companies. (*See Trust Companies.*)

Holidays. January 1st, February 23d, May 30th, July 4th, first Monday in September (Labor day), December 25th, and Thanksgiving Day. If any of these fall on Sunday the Monday following is a holiday.

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

Injunctions. Injunctions may be granted by a district court or by the judge thereof at the beginning of an action or afterwards, in his discretion. A bond must be given to protect the defendant against any loss in case the injunction is wrongfully obtained. In the absence of the judge from the county the probate judge may grant temporary injunctions.

Insolvency. (*See Assignments.*)

Insurance Companies. The law provides for the organization of fire insurance companies, life insurance companies, mutual live stock insurance, mutual hail insurance, and fraternal beneficial association, and all these companies are under the jurisdiction of the superintendent of insurance to whom reports must be made and from whom authority must be obtained. Foreign insurance companies must also obtain authority from the insurance department before transacting business in the State, and each agent of a foreign insurance company must have a license from the superintendent. They are required to pay certain fees and costs of license, etc.

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.

Jurisdiction. (*See Courts.*)

License. Agents of insurance companies are required to take out licenses from the superintendent of insurance. Cities are authorized to enact license ordinances and certain classes of business are required to take out a license.

Liens. Mechanics, material-men, and laborers are entitled to obtain liens upon real estate for labor performed or material furnished in the erection or repair of any building. Statements as to the amount of the claim, for what it was rendered and by whom must be filed in the office of the clerk of the court. Livery-stable keepers, forwarding merchants and common carriers have liens. (See *Judgments*.)

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.

Mines and Mining. The law provides for the appointment of a mine inspector with authority to require mine owners to provide certain facilities for the health and safety of persons employed and compel proper ventilation, regulate excavations, air courses, etc.

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. If the mortgage foreclosed is for the purchase money six months only is allowed for 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*.)

Notaries. Notaries are appointed by the Governor and serve for four years. They give bond in the sum of \$1,000 and are required to affix the date of the expiration of their commission to all certificates.

Notes and Bills of Exchange. Negotiable Instrument Act took effect June 8, 1905.

Partnerships. Limited or special partnerships may be formed for any legal purpose except banking or insurance. Such partnerships may consist of one or more persons who are general partners, and one or more who contribute a specific amount of capital and shall be called special partners. The special partners are not liable for the debts of the partnership beyond the amount contributed by them respectively but the names of the special partners must not be used in connection with the business. Such a partnership is formed by executing a certificate stating the name, the nature of the business, the names of the general and special partners, and their place of residence, and the amount of capital contributed by each special partner, and the period when the partnership is to commence and when it will terminate. The certificate must be acknowledged and filed and recorded in the office of the county clerk.

Power of Attorney. (See *Deeds*.)

Probate Law. (See *Administration*.)

Protest. (See *Notes and Bills*.)

Records. (See *Deeds*.)

Redemption. (See *Mortgages*.)

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.

Service. All service of process is made by the sheriff or by constables, or by some one specially authorized in any particular case, and must be issued in the name of the State with the seal of the officer issuing the same affixed.

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.

Trust Companies. Trust companies may be organized with a capital of not less than \$100,000, and may receive moneys in trust and execute any trust committed to them, either by any person or by order of any court, and may execute or guarantee any bond required by law to be given in any proceeding in court, and act as agent for the investment of money and for the purpose of issuing, registering, transferring or countersigning certificates of stock, bonds or other evidences of debt, act as guardian and guarantee the fidelity and performance of duty of persons holding public offices or private trusts, and certify and guarantee title to real estate and sell all kinds of municipal or corporation bonds, and all kinds of negotiable paper, and receive deposits from banks and other trust companies or public officers. They are required to keep on hand 25 per cent of deposits subject to check and 10 per cent of time deposits, in the same manner as State banks. Each director must be a stockholder in the sum of not less than \$1,000. Trust companies are under the supervision of the bank commissioner and subject to his examination.

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 indorsement 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 MACHPERSON, Esq., Attorney at Law, Louisville. (See *Card in Attorneys' List*.)

Acknowledgments. Deeds executed within the State must be acknowledged before the clerk of a 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 }
County } sct.

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 are required to give bond for the faithful performance of their duties and with surety unless otherwise directed by the will. 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 defendant 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 defendant 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 herefrom four months. 3. Who has departed herefrom 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 defend-

ant'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.

Banks. It is unlawful for any person or persons, either as individuals or co-partners to engage in or conduct the business of private banking in this commonwealth. Corporations may be organized to conduct both a banking and trust company business. The boards of directors of banks and trust companies doing business in this State have full power and authority to fix the hours of opening and closing of said banks and trust companies, and may provide that on Saturday of each week such hour of closing be as early as twelve (12) o'clock noon.

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 may be organized under the general laws for the transaction of any lawful business. Special regulations are prescribed for foreign corporations doing business in the State, and for banking, building and loan, trust, insurance, and railroad companies. Shares of stock are transferred on the books of the corporation in such manner as its by-laws may direct, and every person becoming a stockholder by such transfer succeeds to all the rights and liabilities of his assignor. Under a former law it was held by the court of appeals that when the stock is assignable by transfer on the books of the corporation, the assignment of the certificate with a written power to the assignee to transfer the stock to himself on the books is such a delivery as will affect those having notice thereof, in the same manner as if transfer had been made on the books. The cumulative system of voting is prescribed by the Constitution and by the general law in relation to corporations. Stockholders are liable to creditors for the full amount of the unpaid part of the stock by them subscribed and for no more, except that stockholders in banks, trust companies, guaranty companies, investment companies and insurance companies are liable equally and ratably, and not one for the other, for all contracts and liabilities of the corporation to the extent of the amount of their stock at par value, in addition to the amount of such stock; but persons holding stock, as fiduciaries, are not personally liable, but the estates in their hands are in the same manner and to the same extent as other stockholders, and no transfer of stock operates as a release, of any such liability, existing at the time of the transfer, provided the action to enforce the liability shall be commenced within two years from the time of the transfer. All corporations are required to have a sign over their principal place of business, and on all printed 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. Ordinary business corporations may be organized if any number of persons, not less than three, sign and acknowledge 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 its 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 be in good faith be subscribed, payable at such times as the board of directors may require. 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.

Courts. General civil and criminal jurisdiction is vested in circuit courts which hold terms in each county as provided by statute.

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

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 descendants; 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 householders 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 household 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.

Holidays. The 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July, the first Monday in September (Labor Day), 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 personality 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. An act relating to negotiable instruments became a law June 13, 1904. Section 1 declares that 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 sum certain in money. (3) Must be payable on demand, or at a fixed or determinable future time. (4) Must be payable to the order of a specified person or to bearer. (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. Days of grace are abolished. The signature of any party may be made by an agent duly authorized in writing. Every negotiable instrument is payable at the time fixed therein; when the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day.

Powers of Attorney. Powers of attorney to convey real or personal 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. 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. It is the safer practice to protest in all cases.

Taxation. All real and personal estate within this State and all personal estate of persons residing in this State, and all corporations organized under the laws of this State, whether the same be in or out of the State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises, shall be subject to tax-

tion unless exempt from taxation by the Constitution and shall be assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale: Provided, however, that tangible personal property located and having a taxable situs without the State of persons residing in this State, and of all corporations organized under the laws of this State shall not be subject to taxation. For purposes of taxation real estate includes all lands within the State and the improvements thereon; personal estate every other species and character of property. The following classes of property are exempt from taxation: Public property, places of worship, cemeteries, purely 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 on September 1st, of each year. Taxes of banks and trust companies are payable to the State Treasurer before July 1st of each year, and county, city, town and district taxes are payable at the time fixed by law for payment of like taxes. 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 centum on the face of the bill is added. Real estate sold may be redeemed at any time within two years after the day of sale by paying the purchase money and interest at the rate of 10 per centum per annum and in addition a penalty of 15 per centum on the total amount of the purchase price and the amount of all costs.

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 personality, if executed according to the law of the domicile; but to be valid as to lands, it must be executed as required by 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 judge, notary public, parish recorder or his deputy, in the presence of two witnesses. These witnesses must be males over sixteen 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 acknowledgment, 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 *dativo* 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. (See Successions.)

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.

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. The supreme court and the courts of appeal are authorized to transfer to each other the record of any case where the appeal is brought up through mistake in the jurisdiction, instead of dismissing the appeal. [Act 56 of 1904.]

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 *ieri factus*.

Banks. There is a State Examiner of State banks. [Article 194, Constitution 98 and Act 198 of 1898, and Act 179 of 1902.] The State banks make quarterly reports of their condition to said State examiner of State banks. Banking corporations must be organized under the general free banking laws adopted in 1855, amended in 1888, in 1892, and in 1902. Savings, deposit, and trust companies provided for by Act 150 of year 1888, amended by Act 95 of 1892, which is now amended by Act 189 of 1902. 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. By Act 189 of 1902, the general banking act of 1855 and the amendatory acts of 1888 and of 1892 are 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. In incorporated towns with less than 20,000 inhabitants must have cash capital of not less than \$30,000, which must be paid up before can commence 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. State banks shall at all times have on hand in lawful money of the United States, and cash due from other banks, an amount equal to 25 per cent, 8 per cent of which shall be kept on their respective premises in cash. [Act 116 of 1900.] Under Act 45 of 1902, banks organized to do a savings, safe deposit and trust banking business must be composed of more than five persons, may be organized for not longer than ninety-nine years, may not hold real estate for longer period than ten years, except such as is held as agent or trustee, or necessary for transaction of their business; may accept and execute trusts or agencies of all descriptions, may be appointed by any person or by court executor, administrator, syndic, receiver, curator, tutor, trustee or assignee. Capital stock considered as security for faithful performance of duty, though court may require other security, and may require the State Examiner of Banks to investigate the affairs and management of the bank; must always maintain a money reserve equal to 25 per cent of the aggregate amount of its demand deposits and 8 per cent of such demand deposits shall at all times be kept on its premises in cash. Such banks can not issue notes and must have a capital not less than \$100,000, which must be paid up in cash. Act 179 of 1902 defines banking associations and savings banks, and regulates methods of conducting business, etc. [Amended by act 140 of 1906.] State banks may issue interest-bearing time certificates to depositors. [Act 100 of 1904.]

Bills of Lading have been made negotiable by statute in this State. The law provides that the holder of a bill of lading given by any forwarder, boat, vessel, railroad, transportation or transfer company is deemed and taken to be the owner of the goods, wares, merchandise, etc., specified therein, and may transfer same by endorsement so far as to give validity to any pledge, lien, or transfer made or created by such person, but no property shall be delivered except on surrender or cancellation of said original bill of lading with the endorsement of such delivery thereon. However, in case of partial delivery, if the bill of lading has the words "not negotiable" stamped on its face it shall be exempt from the above provisions. [See Rev. Statutes, Art. 2482.] All bills of lading issued as above shall be negotiable by endorsement in blank or by special endorsement in the same manner and to the same extent as bills of exchange and promissory notes now are. [See Rev. Statutes, Art. 2485.] But see 42d Ann., p. 705, *Lallande vs. creditors*, where the court held:—"Notwithstanding by statute bills of lading may be made negotiable in form they do not become possessed of all the incidents of negotiability that are attributes of bills and notes;" and further held:—"That though a factor may sell and bind his principal he cannot pledge the goods as security for his own debt, even though there have been bills of lading issued to him thereon. The doctrine that a factor cannot pledge is sustained so strictly that it is admitted that he cannot do it by an endorsement and delivery of the bill of lading any more than by delivery of goods themselves."

Bills and Notes and Bills of Exchange. An act known as the "Negotiable Instrument Act" (No. 64 of 1904) changes in many respects the laws formerly applicable to bills and notes. It is the same as has been adopted by a number of States, and desiring to assist in establishing a uniform law on the subject, this State adopted it. Under it, days of grace, which formerly were customary, are abolished. Instruments are payable to bearer if made payable to the order of a fictitious or non-existing person, when such fact is known to the one making it so

payable; when name of payee does not purport to be name of any person; or when the only or last indorsement is in blank. When there is a discrepancy between the words and the figures of an instrument, the sum denoted by the words is the sum payable. Two or more persons signing instrument containing words, "I promise to pay," are jointly and severally liable thereon. Presentment for payment is unnecessary to bind party primarily liable, but is necessary to charge drawer or indorser. Notice of dishonor must be given to drawer and indorser when instrument has been dishonored by non-acceptance or non-payment, otherwise they are discharged. A Bill of Exchange does not operate an assignment of funds in hands of drawee available for payment thereof, and drawee is not liable till he accepts same. Holder may require acceptance to be written on bill, and if refused may treat the bill as dishonored. An acceptance written on paper other than the bill, and an unconditional written promise to accept a bill before it is drawn, binds the acceptor only in favor of a purchaser for value on faith thereof. Drawee has twenty-four hours to decide whether he will accept or not. A drawee who destroys a bill presented to him for acceptance, or who fails to return the bill within twenty-four hours, is deemed to have accepted the same. Where a signature is so placed upon a negotiable instrument that it is not clear in what capacity the person making same intended to sign, he is deemed an indorser. Foreign bills must be protested for non-acceptance or non-payment. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. A check must be presented for payment within a reasonable time, or drawer will be discharged from any loss caused by delay. Bank is not liable to holder of a check until it accepts or certifies same. When the last day to do an act required or permitted to be done under the act falls on a Sunday or legal holiday it may be done on the next succeeding secular or business day. When day of maturity falls on a Sunday or a holiday, the instrument is payable on next succeeding business day. Instruments falling due on Saturday are to be presented for payment on next succeeding business day, except that instruments payable on demand may, at option of holder, be presented for payment before 12 o'clock noon on Saturday when that entire day is not a holiday. The following are days of public rest and legal holidays and half holidays. [Act 3 of 1904.] Sundays, January 1st, January 8th, February 22d, Good Friday, June 3d, July 4th, November 1st, Thanksgiving Day, December 25th, and all general election days. Besides the above, in parish of Orleans, Mardi Gras and September 1st are legal holidays. In cities of more than 15,000, every Saturday, from 12 o'clock noon until 12 o'clock midnight, shall be known as a half holiday. In cities of more than 40,000, whenever January 1st, January 8th, February 22d, June 3d, July 4th, November 1st, and December 25th shall fall on a Sunday, the succeeding day shall be a legal holiday. If the day or days next succeeding the protest for non-acceptance or non-payment shall be days of public rest or legal holidays or legal half holidays, then the day next following shall be computed as the first day after the protest. "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.]

Chattel Mortgages 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 State. They are divided into three heads: Personal, hereditary, and mixed, and may be created either expressly (written or oral) or impliedly.

Conveyances. (See *Deeds*.)

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. Corporation committing a trespass or damage may be sued at place where it occurred. [Act 22 of 1894.] All corporations hereafter organized must have their charters, etc., recorded in the office of the secretary of state. [Act 59 of 1898.] (See Act 154 of 1902 for formation of corporations for works of public improvement.) Act 120 of 1902 provides for organization, etc., of local and foreign building and loan or homestead associations. Three or more persons may form a corporation to carry on any business specified in charter that would be lawful for any individual to carry on. May carry on any named business or different branches of business, whether related or not. Must have capital of not less than \$3,000. [Act 78 of 1904.]

Costs. The costs of court are regulated by statute. All court costs must be paid in advance and defendant may require resident security to be given for his costs before pleading. From \$20 to \$25 should be sent for costs for suits involving more than \$500 and from \$15 to \$30 for smaller amounts.

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 banc* 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*.

Creditors' Bills. Not in use in this State.

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

Deeds. All agreements affecting real property must be in writing, and transfers and mortgages, etc., must be recorded in the place where the property is situated to affect the rights of third persons. Deeds are made under private signature or by act passed before a notary public in the presence of two witnesses. Both vendor and vendee sign, though signature of vendee is not essential, as any act of acceptance will answer. The notary preserves the originals of deeds passed before him and certified copies given by him are received as evidence in the courts. Every notarial deed should contain (1) date of act and place where it was passed, (2) names and surnames and qualities of contracting parties, (3) description of the property, etc., (4) price of transfer and terms and conditions.

Depositions. To take testimony of witness residing out of parish or State it is necessary to file motion duly sworn to showing non-residence and materiality of evidence. Written interrogatories are prepared and served on opposite party, or his counsel, who has three days in which to cross. Commission then issues, directed to some proper officer, with interrogatories and cross-interrogatories annexed, who must cause witness to appear before him to answer under oath the direct and the cross interrogatories. He should reduce answer to writing, read same to witness and cause witness to sign same. The officer then prepares a process verbal of the whole, attaches it to the commission, interrogatories, etc., and should return same to the court issuing the commission within the time fixed therein for taking the deposition.

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. (See *Separation from Bed and Board*.)

Dower. (See *Married Women*.)

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 year's 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.

Evidence. Transfers of immovable property must be in writing and cannot be proved by parol evidence. All agreements relative to movable property and all contracts for payment of money when value does not exceed \$500 which are not reduced to writing may be proved by any other competent evidence; such contracts above \$500 in value must be proved at least by one credible witness and other corroborating circumstances. Parol evidence shall not be received: "To prove any acknowledgment or promise to pay any judgment, sentence, or decree of any court of competent jurisdiction, either in or out of this State, for the purpose or in order to take such judgment, sentence, or decree out of prescription, or to revive the same after prescription has run or been completed. 2. To prove any acknowledgment or promise of a party, deceased, to pay any debt or liability, in order to take such debt or liability out of prescription, or to revive the same after prescription has run or been completed. 3. To prove any promise to pay the debt of a third person. 4. To prove any acknowledgment or promise to pay any debt or liability evidenced by writing, when prescription has already run. But in all the cases mentioned in this article the acknowledgment or promise to pay shall be proved by written evidence signed by the party, who is alleged to have made the acknowledgment or promise, or by his specially authorized agent or attorney in fact." [Art. 2273 R. C. C.] Evidence of contents of lost or destroyed instruments in writing sought to be enforced, may be shown, provided, the party first prove the loss, and provided the judge may require reasonable security as indemnity against the appearance of the instrument. All persons of proper understanding may give evidence. Husband and wife can not testify for or against each other unless they are joined as plaintiffs or defendants and have separate interests. Attorneys shall not give evidence of anything confided to them by their clients without their permission. Attorneys may be witnesses in the causes in which they are engaged as counsel. An affidavit of the correctness of an open account is received as *prima facie* proof to confirm a judgment by default. Parol evidence incompetent to prove debt or liability of a party deceased except it consist of testimony of at least one credible witness of good moral character besides the plaintiff, or except it be to corroborate written acknowledgment or promise to pay signed by debtor, or unless action upon asserted indebtedness be brought within twelve months after decease of debtor. [Act 207 of 1906.]

Execution. Property taken under a writ of *fiery 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. Act 113 of 1903 authorizes sheriffs and constables to put purchaser of seized property in possession.

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 or minor children 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 service (laborers' wages) cooking stove, plates, etc., family portraits, musical instruments played on by family. (Acts 1876, No. 79.)

Foreign Corporations. Corporations, companies, or associations organized or domiciled out of the State, but doing business therein, may

be licensed and taxed by a mode different from that provided for home corporations or companies; provided, said different mode of license shall be uniform, upon a graduated system, and said different mode of taxation shall be equal and uniform as to all such corporations, companies, or associations that transact the same kind of business. No domestic or foreign corporations shall do any business in this State without having one or more known places of business and an authorized agent or agents in the State upon whom process may be served. [Art. 264, Const. of '98.] All corporations (except mercantile corporations) domiciled out of the State and doing business in the State in default of filing with the secretary of state a declaration of the place of its locality or domicile together with the name of its agent in the State upon whom service of process may be made, may be sued upon any cause of action in any parish where the right of action arises. It is unlawful for any corporation not domiciled in Louisiana to enter into any combination or agreement with another corporation to prevent its legally authorized representatives in Louisiana from accepting a higher compensation than the corporations parties to the aforesaid agreement pay. [Act 182 of 1904.]

Foreign corporations doing business in this State must file in office of secretary of state a written declaration setting fourth and containing the place or locality of its domicile, the places in the State where it is doing business, and the name of its agent or other officer in this State upon whom process may be served. [Act 54 of 1904.]

Foreign Judgments. Judgments rendered in the different courts of the United States shall import full proof in the courts of this State if the copies of them which are offered be certified by the clerk of the court in which they are rendered, be sealed with his seal, if there be one, and clothed with a certificate of the judge, chief justice, or magistrate who presides in the court, as the case may be, declaring that the attestation is made in due form. Judgments of other States are always open to investigation as to the jurisdiction of the court to render them; they may be contradicted as to judicial recitals as to subject matter or the person or in proceedings in rem as to the thing. When judgments rendered in foreign countries, copies presented shall be considered authentic and admitted in evidence in the courts of this State if clothed with all the forms required to prove their authenticity in the countries where they are pronounced.

Fraud vitiates all contracts. Action barred by one year limitation to annual sale on account of fraud.

Garnishment. Wages earned out of this State and payable out of this State, shall be exempt from attachment of garnishment in all cases where cause of action arose out of this State, and it shall be the duty of garnishees in such cases to plead such exemption unless the defendant is actually served with process. [Act 165 of 1904.] (See Attachment.)

Guaranty Companies. Any corporation organized under the laws of this State or other States for the purpose of transacting the business of guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies, and executing and granting bonds or undertakings required or permitted in actions or proceedings by law allowed and having a paid-up cash capital of not less than \$250,000, and which has complied with and is qualified under the laws of this State and which has assets allowed as such under the law of this State or under the laws of the State in which it is incorporated, in excess of its capital stock, its outstanding debts and a premium reserve on all outstanding risks may be accepted as sole and sufficient surety upon any bond, undertaken or obligation required or permitted by law, etc. Such companies shall be subject to all the liabilities and have all the rights of sureties under the law; such companies shall not transact business in this State until they file with the secretary of state a written application to be authorized to do so, a copy of its charter and a statement signed and sworn to by its president and secretary stating the amount of its paid-up cash capital, the amount of premiums on existing bonds upon which it is surety and the amount of liability for unearned portion thereof, estimated at 50 per cent of annual premiums on all outstanding risks for one year or less, specifying also the amount of its outstanding debts, the amount of its income and expenditures, etc. If such company is incorporated in another State it must also file a power of attorney appointing some resident of this State upon whom service of process can be made. Certificate of secretary of state, authorizing such company to become surety on bonds, etc., shall be conclusive proof of its solvency and credit. [See Act 41 of 1894 for detailed information.] All guaranty, fidelity, surety and bond companies doing business in this State, must deposit with State Treasurer a guarantee fund for protection of citizens of this State and insuring a compliance with all contracts made by them in the State. [Act 71 of 1904.]

Holidays. (See Bills and Notes.)

Husband and Wife. (See Married Women.)

Inheritance Tax. (See Successions.)

Injunctions. Injunctions against defendant lie: First, for obstruction of public place; Second, for obstruction of beds or banks of navigable rivers; Third, for building on real estate claimed by plaintiff; Fourth, of opposing execution of public work; Fifth, against disturbance of plaintiff in possession; Sixth, against husband's disposing of property during wife's suit for separation; Seventh, against seizures by sheriffs of property of third persons or other illegal acts; Eighth, to prevent the disposition of property claimed pending suit; Ninth, in case of eviction of purchaser; Tenth, against execution on ground of payment and compensation. Injunctions lie against third persons not parties to the suit in the following cases, viz.: 1. When one claims preference of payment over seizing creditor sheriff may be enjoined from paying over proceeds. 2. When one claims that the only piece of property of debtor is seized and prays that the proceeds be brought into court for distribution among creditors according to their respective privileges. 3. Against disposing of property *pendente lite*. 4. To preserve property or prevent waste or other injurious actions. 5. Against the seizure for purchase price while title to thing sold is in dispute. Party applying for injunction must do so by proper petition, stating under oath the facts which render it necessary, and must annex his bond in favor of defendant for such sum as court may fix. Injunctions may be bonded in all cases where no irreparable injury could be done persons praying for it, upon defendant's giving bond in favor of plaintiff for an amount to be fixed by the court. Violation of injunctions punished by imprisonment.

Insolvency. Abrogated by U. S. Bankruptcy Act.

Insurance Companies. Act 105 of 1898 and Act 144 of 1900 as amended by Act 50 of 1902, provide generally for the organization of insurance companies in this State on the stock plan and upon the mutual plan. Fifteen persons are required to organize such companies, and they must be residents of the United States and of this State. The amount of capital varies according to the nature of the business. The secretary of state passes upon their applications to do business and issues certificates authorizing the issuance of policies, etc. No insurance company organized under the laws of other States or foreign countries shall issue policies, etc., until it shall have first appointed in writing the secretary of state as

its true and lawful attorney, upon whom legal process may be served. The secretary of state shall, upon being served, forward by registered mail said copy of process to the secretary or manager of the company. No judgment by default can be taken against the company if it be shown that the secretary of state neglected to forward the copy of process served upon him. No insurance company organized out of the State shall do business here until: 1. It shall deposit with the secretary of state a copy of its charter, statement of financial condition, in such form as he may require, signed and sworn to by its president and secretary, or other proper officer. 2. It shall satisfy the secretary of state of its legal organization under the laws of its State to do the business it proposes to transact in this State; that if it is a stock company it has a fully paid-up capital, exclusive of stockholders or obligations of any description, an amount of not less than is required of companies organized under the State law, and if a mutual company, that it has a capital required of like companies organized in this State. 3. It shall appoint some resident in this State as its agent. 4. It shall obtain from the secretary of state a certificate authorizing it to make contracts of insurance. It shall, besides, be required to make a deposit with the treasurer of this State, or with the financial officers of some other States in which said company has been duly authorized to do business, a sum not less than \$200,000, which deposit must be in exclusive trust for the benefit and security of all the policy holders and creditors in the United States, which deposit shall be deemed for all purposes of the insurance laws of this State the capital of the company. Insurance companies must file annually accounts with the secretary of state; dividends limited to 10 per cent; business must be written through licensed resident agents. Fire insurance companies shall not enter into combinations to fix rates. [Act 110 of 1900.] Value of immovable property, partially damaged or destroyed, as assessed at the time of the insurance by the insurer, or as by him allowed to be assessed, shall be conclusively taken to be the true value of the property at the time of the issuance of the policy, and the true value of the property at the time of the damage or destruction. [Act 135 of 1900.] A fire marshal created by Act 123 of 1904, who shall investigate the cause, origin, and circumstances of fires. Tax levied on insurance companies to bear expenses. Insurance companies may organize a Fire Prevention Bureau. [Act 189 of 1904.]

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 115 Annual Reports published in 1906, inclusive.

License varies according to character and amount of business. All persons, associations of persons, and corporations pursuing any trade, profession, business, or calling are liable to such tax, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural, and mining pursuits, and manufacturers other than those of distilled, alcoholic, or malt liquors, tobacco, cigars, or cottonseed oil [See Act 171 of 1898 amended by Act 133 of 1902 and Act 103 of 1900 and Act 47 of 1904 and Act 49 of 1904, and Acts 62 and 214 of 1905, amending Act 171 of 1898, for amounts of licenses.]

Peddlers and hawkers shall pay licenses. "Peddlers and hawkers" include and apply to all transient merchants and itinerant vendors selling to consumers by sample or by taking orders for immediate or future delivery. Does not apply to persons selling at wholesale to merchants, nor to persons selling and distributing fresh meat, eggs, etc. (Act 49 of 1904.) Art 229 of Const. of 1898 gives General Assembly the right to levy a license tax.

Liens or Privileges are rights which the law gives certain creditors in preference to all others upon the property of their debtors according to the nature of their claims. Liens and privileges rest upon immovable and movable property. Privileges upon immovables affect third persons only when recorded against the properties in the parish in which they are situated. The nature and the rank of privileged creditors are fully set forth in the civil code. The debts which are privileged on all movables in general are as follows, and are paid in the following order: 1. Funeral charges. 2. Law charges. 3. Charges of whatever nature, occasioned by the last sickness, concurrently among those to whom they are due. 4. The wages of servants for the year past, and so much as is due for the current year. 5. Supplies of provisions made to the debtor or his family during the last six months, by retail dealers, such as bakers, butchers, grocers; and during the last year, by keepers of boarding-houses and taverns. 6. The salaries of clerks, secretaries, and other persons of that kind. 7. Dotal rights due to wives by their husbands. [Art. 3191 C. C.] Debts which are privileged on certain movables are as follows, viz.: 1. The appointments or salaries of the overseer for the current year on the crops of the year and the proceeds thereof; debts due for necessary supplies furnished to any farm or plantation, and debts due for money actually advanced and used to the purchase of necessary supplies and the payment of necessary expenses for any farm or plantation, on the crops of the year and the proceeds thereof. 2. The debt of a workman or artisan for the price of his labor, on the movable which he has repaired or made, if the thing continues still in his possession. 3. The rents of immovables and the wages of laborers employed in working the same, on the crops of the year, and on the furniture, which is found in the house let, or on the farm, and on every thing which serves to the working of the farm. 4. The debt on the pledge which is in the creditor's possession. 5. That of a depositor, on the price of the sale of the thing by him deposited. 6. The debt due for money laid out in preserving the thing. 7. The price due on movable effects, if they are yet in the possession of the purchaser. 8. The things which have been furnished by an innkeeper, on the property of the traveler which has been carried to his inn. 9. The carrier's charges and the accessory expenses on the thing carried. There are also the following special privileges, viz.: 1. Le-sor's privilege. 2. Privilege of the creditor on the thing pledged. 3. Privilege of a depositor on the price of a thing deposited. 4. Privilege for expenses incurred in preserving thing. 5. Privilege of the vendor of movable effects so long as they are in the possession of the vendee. 6. Privilege of the innkeeper on the effects of the traveler. Privileges resting upon immovables are as follows, viz.: 1. The vendor on the estate by him sold, for the payment of the price or so much of it as is unpaid, whether it was sold on or without a credit. 2. Architects, undertakers, bricklayers, painters, master builders, contractors, sub-contractors, journeymen, laborers, cartmen, and other workmen employed in constructing, rebuilding, or repairing houses, buildings, or making other works. 3. Those who have supplied the owner or other

person employed by the owner, his agent or sub-contractor, with materials of any kind for the construction or repair of an edifice or other work, when such materials have been used in the erection or repair of such houses or other works. [Art. 3252.] Privileges become extinct: 1. By the extinction of the thing subject to the privilege. 2. By the creditor acquiring the thing subject to it. 3. By the extinction of debt which gave birth to it. 4. By prescription. 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.

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 rescission 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, transitive 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.

Mines and Mining. Three persons may form themselves into and constitute a corporation for the purpose of carrying on a mining business; the capital must be not less than \$5,000 or more than \$1,000,000. (See *Corporations*.)

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.]

Notaries Public. Must give bond for \$10,000, in New Orleans, and number limited to 175; bond to be renewed every five years. [Acts of 1896 amended by Act 187 of 1902.] They are appointed for life.

Partnership, Limited and Special. All partnerships must be created by consent of parties. Stipulations that one shall participate in the profits and shall not contribute to losses is void, both as regards partners and third persons. A partnership cannot be executor, curator, or tutor, and cannot exercise any private office. Partnerships are divided as to their object into commercial and ordinary partnerships. Commercial partnerships are such as are formed: 1. For the purchase of any personal property, and the sale thereof either in the same state or changed by manufacture. 2. For buying or selling any personal property whatever, as factors or brokers. 3. For carrying personal property for hire, in ships or other vessels. [Art. 2825, C. C.] Ordinary partnerships are all such as are not commercial; they are divided into universal and particular partnerships. Commercial partnerships are divided into two kinds, general and special. There is also a species of partnership which may be incorporated with either of the other kinds, called partnership *in commendam*. Universal partnership is a contract by which parties agree to make a common stock of all the property they may possess. It may embrace only personal property, or both real and personal. It must be in writing and recorded in mortgage office. Particular partnerships are such as are formed for any business not of a commercial nature. Must be reduced to writing if part of stock consists of real estate and recorded in mortgage office. Partnership *in commendam* is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished and no more. Partner *in commendam* cannot bind other partners by his act. Partnership *in commendam* must be made in writing; must express amount furnished or agreed to be furnished; the proportion of profits which partner is to receive and expenses and losses he is to bear; must state whether it be received in goods or money, etc.; must be signed by parties in presence of at least one witness and recorded in full within six days in mortgage office. If branch houses are established the contract must be recorded in parish where branches are located. If partner *in commendam* allow his name to be used, or if he take any part in the business of the partnership, he will be liable as a

general partner. Ordinary partners are not bound *in solido* for debts of partnership, and no one of them can bind his partners unless they have given him power to do so; each is bound for his share of the debt in proportion to the number of partners. Commercial partners are each liable for the entire debts of the partnership. Partnerships end: 1. By the expiration of the time for which such partnership was entered into. 2. By the extinction of the thing, or the consummation of the negotiation. 3. By the death of one of the partners, or by his interdiction. 4. By his bankruptcy. 5. By the will of all the parties, legally expressed, or by the will of any of them, founded on a legal cause, and expressed in the manner directed by law.

Powers of Attorney. May be written or oral. May be either general for all affairs or special for one affair only. One conceived in general terms confers only power of administration; to sell mortgage or do any other act of ownership, the power must be express and special.

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.] Act 53 of 1906 gives threshermen a lien and privilege on crop.

Probate Law. There is no special probate court. District courts are vested with probate jurisdiction. Successions are opened upon petition of interested persons in the parish where the deceased resided if he had a domicile or fixed place of residence in the state; in the parish where he left his landed property, if he had neither domicile nor place of residence in the state; or in the parish in which it appears from the inventory that his principal property was situated, if he left property in several parishes; in the parish where he died, if he had no certain domicile nor any fixed property. The judge appoints an administrator when deceased leaves no will. Administrators must render annual accounts, and are allowed 2½ per cent on the inventory as commissions. Attorneys at law are appointed to represent absent heirs. Properties acquired during marriage are presumed to be community property, and surviving spouse is owner of one-half. When either husband or wife dies, leaving no ascendants or descendants, and without having disposed by will of his or her share in the community, the survivor holds such share in usufruct during his or her natural life (See *Successions*.)

Protest. (See *Bills 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.] Railroad Commission to have jurisdiction over railroads. [Acts 73 and 74 of 1902 and Act 24 of 1904.]

Records. Notaries preserve records of acts passed before them, and must record all deeds required to be registered within forty-eight hours after passing them. Court records may be withdrawn by attorneys upon motion and upon receipting for same.

Redemption. Properties sold under foreclosure of mortgage, or under writ of *heri facias* cannot be redeemed. No redemption except for sale for taxes, and are limited to one year from date of registry of sale, and party redeeming must pay taxes, costs, and 20 per cent more.

Replevin. Not known in Louisiana law. (See *Liens and Privileges*.)

Revision. The civil code, code of practice, and revised statutes were revised in 1870. Next session of the General Assembly will be held in 1908.

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.

Service. Parties are brought into court by service made upon them of citation and copy of petition; service is made by the constable or sheriff, and is made by personal service or by domiciliary service, by being left at the usual place of domicile or residence of the defendant, if he be absent, by delivering them to a person apparently above the age of 14 years, living in the house. Service on married women may be made by delivering to either husband or wife. Service is made on minors, interdicted or absent persons, through their tutor or curator. Service made on banks through their presidents, in person or at the banking establishment, on the teller, or in his absence on some other officer. Service on other corporations made on their president or other officer. Service on commercial firms made on any of the partners, in person or by delivery to any clerk or agent at their store. Sheriff must make return showing how service was made. This return is *prima facie* proof of the service. Whenever any person transacts business in this State, either personally or through an agent, and a cause of action arises out of said business and he shall then depart from the State, he may be still cited in the State in the parish where said business was had; citation shall issue and service may be made upon defendant by delivery to him of the petition and citation by any male person over 21 years of age. The person making the service shall make return, setting forth date and place of service with express declaration that it was made by delivering petition and citation to defendant in person, said return to be sworn to before any notary public, magistrate, consul, etc., in the State or country where the service was made. (See *Bills and Notes*.)

Successions. There are three sorts of successions, to wit: Testamentary successions, legal successions, and irregular successions. Testamentary succession is that which results from the institution of heir, contained in a testament executed in the form prescribed by law. Legal succession is that which the law has established in favor of the nearest relation of the deceased. Irregular succession is that which is established by law in favor of certain persons, or of the State in default of heirs, either legal or instituted by testament. Legitimate children or their descendants inherit from their father and mother, grandfathers or other ascendants, without distinction of sex or primogeniture, and though they may be born from different marriages. They inherit in equal portions and by heads, when they are in the same degree and inherit by their own right; they inherit by roots when all or part of them inherit by representation. If one dies leaving no descendants, but a father and mother and a brother and sister, or descendants of these last, the succession is divided into two equal parts, one goes to father and mother, the other to brothers and sisters or their descendants. If either father or mother of deceased dies before him, the portion which would have been inherited by such deceased parent goes to the brothers and sisters of the deceased, or their descendants. If deceased left neither descendants nor brothers nor sisters, nor descendants from them, nor father nor mother, but only other ascendants, they inherit to the exclusion of all collaterals. If ascendants in paternal and maternal lines are all of the same degree, the estate is divided into two parts, one goes to ascendants on the paternal and the other to ascendants on the maternal side. If there is in the nearest degree but one

ascendant in the two lines, such ascendant takes the entire succession. If one dies leaving no descendants, and his father and mother survive, his brothers and sisters, or their descendants, take half of his estate. If the father or mother only survive, brothers and sisters, or their descendants, take three-fourths. If one dies leaving no descendants nor father nor mother, his brothers and sisters, or their descendants, take all the estate. The partition of the half, the three-fourths, or the whole of a succession falling to brothers and sisters as above set forth, is made equal if they are of the same marriage, if of different marriages the succession is equally divided between the paternal and maternal lines of the deceased. If deceased died without descendants, leaving neither brothers nor sisters, nor descendants from them, nor mother nor father, nor ascendants in the paternal or maternal lines, his succession passes to his other collateral relations, the one nearest in degree excluding the others. When the deceased has left neither lawful descendants nor lawful ascendants, nor collateral relations, the law calls to his inheritance either the surviving husband or wife, or his or her natural children, or the State. If natural mother left no lawful children or descendants, her natural children, acknowledged by her, inherit to the exclusion of her father and mother and other ascendants or collaterals of lawful kindred. Natural children inherit from their natural father, who has acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State. Donations *inter vivos* or *mortis causa* cannot exceed two-thirds of the property of the disposer, if he leave at his decease a legitimate child, one-half if he leaves two children, and one-third if he leaves three or more. Donations *inter vivos* or *mortis causa* cannot exceed two thirds of the property if the disposer, having no children, leaves a father or mother, or both. An administrator appointed by a court of another State 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.] (See *Transfer of Corporation Stock*.) An inheritance tax is levied upon all inheritances, legacies and donations, provided no direct inheritance or donation to an ascendant or descendant below \$10,000 shall be taxed. Tax is 2 per cent on direct inheritances and donations to ascendants or descendants and 5 per cent for collateral inheritances and donations to collaterals or strangers. Bequests to educational, religious or charitable institutions are exempt. Inheritance tax not due when property inherited, bequeathed or donated shall have borne its just proportion of taxes prior to time of such donation, bequest, or inheritance. [Act 103 of 1906.] Act 153 of 1900, amended by act 70 of 1906, provides for settlement of successions possessing not over \$500 worth of property. 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.]

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.

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 five 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.]

Testimony. In all cases subject to appeal the testimony is taken in writing, except in city and justices' courts, where cases appealed are tried *de novo* by appellate court. (See *Evidence*.)

Transfer of Corporation Stock. Whenever any person permanently residing without the State shall die, being the owner of any bank stock, railroad stock, insurance, or other stock, in any bank or incorporated company in this State, or in any national banking association located in this State, it shall be legal for his heirs, executors, administrators or representatives to sell and transfer any or all stock so held upon the books of such bank, incorporated company, or banking association, or in any other manner recognized by the charter of such bank, etc.; to demand and receive from such bank, etc., any and all dividends that have accrued thereon, without the necessity of having themselves recognized as such by obtaining from any court in this State any order or decree for the sale or transfer of any or all such stock or accrued dividends thereon. [Act 109 of 1888.] Delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee, for value, together with a written transfer of same, or written power of attorney to sell, assign and transfer same, signed by the owner, shall be a sufficient delivery to transfer title as against all parties; but no such transfer shall affect the right of the corporation to pay any dividend due on stock, or to treat holder of record as holder in fact, until such transfer is recorded on its books. [Act 180 of 1904.] No bank, corporation, etc., shall deliver or transfer money, stock, bonds, etc., of a deceased person to his heir, legatee, etc., unless the inheritance tax due thereon is paid or unless it be judicially determined that no such tax is due, otherwise such bank, corporation, etc., shall be liable for the tax. [Act 109 of 1906.]

Trust Companies. Trusts, as they exist under common law, are prohibited under the laws of Louisiana. Substitutions and *fidei commissaria* are and remain prohibited. Every disposition by which the donee, the heir, or legatee is charged to preserve for or to return a thing to a third person is null, even with regard to the donee, the instituted heir or the legatee. See Acts 150 of 1888 and 95 of 1892, and Acts 45 and 179 of 1902, for organization of Trust Banks.

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.]

Warehouse Receipts. Issued by warehousemen to order of owner or depositor or person entitled to the property stored in public warehouse. Said receipt shall bear date of the day of its issuance; shall state name of warehouse and its location; shall give description, quality, etc., of property stored and date on which it was delivered. Receipts must be numbered and duplicates issued only in case of loss or destruction; these must be marked duplicates and security must be left with warehousemen to protect the

party who may finally hold original receipt. Such receipts shall be negotiable and transferable by endorsement in blank, or by special endorsement and delivery in same manner and to same extent as bills of exchange and promissory notes. Such transferee or holder of such public warehouse receipts shall be considered and held as actual owner, provided the words "not negotiable" are not stamped upon them. All the above provisions do not apply to receipts of private warehouses. [See Act 156 of 1888.] Any person who may sell agricultural products of the United States in any chartered city or town of this State, shall have a special lien thereon to secure payment of purchase price for the period of five days after date of delivery, and may seize same within said time in whatsoever hands or place it may be found. His claim for purchase money shall have preference over any privilege or claim of the holder of the warehouse receipt. [Act 63 of 1890.] Warehousemen may sell for cash at public auction goods left in storage after one year, when the charges thereon have remained due and unpaid for a period of more than six months, after giving written notice of thirty days to the person who stored the goods, and if he neglects to pay within thirty days after receipt of notice. [Act 85 of 1894.] Custodians of goods responsible for value of same unless delivered to proper owner of warehouse receipts. Proof of ownership, by affidavit, of goods stored must be made on offer to pledge warehouse certificates. [Act 176 of 1903.]

Wills. There are four different kinds of wills, viz.: The olographic, nuncupative by public act, nuncupative by private act, and mystic (or sealed) will. The olographic will must be wholly written, dated, and signed by the testator, and may be made within or without the State. Nuncupative will by public act as written by a notary in presence of three witnesses, males, residing in the place where will is executed, or five witnesses not residents of the place, at the dictation of the testator. Nuncupative will by private act and mystic wills are subject to many formalities which may be best obtained by reference to Civil Code Arts. 1581-1587 both inclusive. All persons of sound mind over sixteen years of age may dispose of their property by will.

SYNOPSIS OF THE LAWS OF MAINE

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and revised by MESSRS. VERRILL, HALE and BOOTH, Attorneys at Law, Portland. (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 subpoena issued by him, or may be inserted in writ of attachment and served by copy of bill and writ.

Administration of Estate. (See *Estates of Deceased Persons and Estates of Deceased Partners*.)

Affidavits. Affidavits may be made before a notary public or justice of the peace. Affidavits required to plead and motions in abatement 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 right of descent 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 estate 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. 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 necessities. 7. In certain cases money due on life and accident policies, and from fraternal beneficiary associations. (See *Creditors' Bills*.)

Banks. Savings bank business and discount banking permitted only under special charter, and under State supervision. General statutes relating to discount banking repealed by Laws 1903, c. 166. Foreign banking associations having a branch here pay a tax of three-fourths of one per cent per annum on the amount of business done in this State. 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 is five-eighths per cent, regulated to favor home investments. Use of the words "bank," "trust company," and similar words in designating a business, forbidden, except by corporations organized as above or under laws of United States.

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

Bills of Lading. Usual common law rules.

Chattel Mortgages. (See *Mortgages.*)

Collaterals. (See *Mortgages.*)

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 bankrupt laws of the United States or 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.

Conveyances. (See *Deeds.*)

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, but corporations may be formed under the general law for the construction and operation of railroads outside the State of Maine. 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. Organization becomes void unless corporation begins business within two years. Corporation may capitalize to an unlimited amount and may increase or decrease the amount of their capital or the par value of the shares. No portion of capital is required to be paid in; stock may be issued for property or for services and in absence of fraud the judgment of the directors as to the value of such property or services is conclusive, the stock thereupon becoming fully paid. 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 who shall have begun proceedings to obtain such judgment against the corporation during the ownership of such stock or within one year after its transfer by such stockholder is recorded on the corporation books. Directors must be stockholders or members of another corporation which is a stockholder. Corporations must pay to the State upon organization, a fee as follows: Where the capital stock is \$10,000 or less, \$10; exceeding \$10,000 and up through \$50,000, \$50; above \$50,000, \$10 for every \$100,000 of capital. Other fees for organization are: Attorney-General's fee \$5, Register of Deeds \$5, Secretary of State \$5. The annual franchise tax is as follows: \$5 provided authorized capital does not exceed \$50,000; exceeding \$50,000 and up through \$200,000, \$10; exceeding \$200,000 and up through \$500,000, \$25; exceeding \$500,000 and up through \$1,000,000, \$50; and the further sum of \$25 per \$1,000,000 or any part thereof in excess of \$1,000,000. Corporations which have suspended business temporarily and have been excused from filing returns of amount of capital stock, etc., are not liable for franchise tax. Meetings of stockholders must be held within the State. Clerk must be resident and keep stockholders' records in the State. His records are open to inspection by stockholders but not by mere creditors. With the exception of banking corporations no public reports are required except one to the Secretary of State showing names and residences of officers and amount of capital stock. Delivery of certificate of stock to bona fide purchaser or pledgee 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 title against all parties. 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.

Costs. Party prevailing recovers costs unless otherwise specially provided. Voluminous statutory provisions as to costs in special cases such as appeals, set-offs, etc. When costs have been allowed against plaintiff on non-suit or discontinuance, and a second suit is brought for the same cause, further proceedings stayed until these costs are paid. No costs allowed plaintiff in an action on a judgment of any tribunal on which an execution could issue when suit was begun except in trustee process. In equity proceedings there are no costs as a matter of right, though court at its discretion allows them.

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 second Tuesday of January and first Tuesday of April and September at Augusta; second Tuesday of June and November at Waterville. Courts of probate: Usual jurisdiction of probate matters. 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.

Creditors' Bills. Bill in equity may be maintained to reach property of debtor which cannot be reached by process at law, and is not exempt from attachment; also property conveyed in fraud of creditors and property secreted so that it is not replevable.

Days of Grace. (See *Grace.*)

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 clerk of a court of record having a seal, 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. 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, 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 libellant 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. Either party may be a witness. When divorce granted husband for fault of wife he is entitled to one-third of her real estate, except wild lands, and to such part of her personal property as the court may order.

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 not 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 charge 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 (excepting wild lands conveyed by him) 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. 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 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 all are of the same degree of kindred; otherwise, according to the right of representation. 8. If the intestate leaves no widower or kindred, it escheats to the State. (See *Wills.*)

Evidence. Numerous statutory provisions governing nature and sufficiency of evidence in questions of title to land, tax sales, violations of game and liquor laws, appointments of executors, etc., in other States, etc. Either party to a suit, or the husband or wife of either party may be a witness, but where one of the parties is an executor or administrator or is a party as heir of a deceased party the other party cannot testify except as to account books and other memoranda of the deceased used in evidence on either side, or except as to events subsequent to death of deceased, unless executor or administrator or other legal representative himself testifies. Where one of the parties solely interested is insane, the same rules apply as in case of executors, etc. Under certain circumstances provided for in the statutes, depositions may be offered in evidence, so also evidence given at former trials. As a general thing the usual common law rules prevail.

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. Life and accident policies are exempt from creditors, except any excess of \$150 per year premium paid within two years.

Foreign Corporations. (See *Corporations.*)

Foreign Judgment. Action of debt lies on a foreign judgment and record of it is prima facie evidence of indebtedness. Is conclusive except for fraud when given by court having jurisdiction of parties and subject matter.

Fraud. Usual common law rules as to what constitutes fraud, fraudulent representations, etc.; also statutory penalties for fraud, cheats, etc. Court of Equity has power to afford relief. Statutory provisions to prevent sale in bulk of part or whole of stock of merchandise in fraud of creditors.

Garnishment. (See *Attachment.*)

Grace. Days of grace abolished by Chapter 259, Laws of 1897, excepting as to drafts or bills of exchange payable at sight.

Guaranty Company. May be formed under general corporation law. No particular statutory provisions.

Holidays. (See *Notes and Bills.*)

Husband and Wife. Each may hold and deal with property individually, subject to right of descent in real estate. (See *Estates of Deceased Persons.*) Husband not liable for debts of wife contracted before marriage, nor afterward in her own name, nor for her torts. (See *Divorce and Evidence.*)

Injunctions. Preliminary injunctions may be granted by a single justice in term time or vacation; perpetual by court or any justice making final decree. Special statutory provisions for injunctions to control in certain matters—railroads, insurance companies, and other corporations—also to abate nuisances. Supreme judicial court has full equity powers and right to cover by injunction all the field incident thereto.

Insolvency. State insolvency law abrogated by National Bankruptcy Act of 1898.

Insurance Companies. Organized under general law controlling both stock and mutual companies. Capital shall be at least \$100,000. Foreign fire or marine insurance company must have \$200,000 capital. Investment of funds controlled by statutes. No dividends while capital stock impaired. Policy not invalidated by immaterial false representations by insured. Returns showing condition required annually. Insurance Commissioner to be appointed by Governor. Foreign insurance company must obtain license from him. Process against foreign insurance company may be served on Commissioner. Agents must obtain license. Commissioner to examine into affairs of companies and to restrain insolvent ones from new business. Non-forfeiture law covering life insurance policies having by their terms no surrender value.

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.

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.

Jurisdiction. Trial justices have original and exclusive jurisdiction of all civil actions where debt or damages do not exceed \$20, except in those towns where municipal or police courts are established. Jurisdiction of latter determined by statute creating them. In Cumberland and Kennebec counties superior courts are established with jurisdiction defined by statute. Supreme judicial court has jurisdiction of all matters not covered by the others, particularly of actions involving the title to real estate and of suits in equity. Jurisdiction of state extends to all places within its boundaries subject to such rights of concurrent jurisdiction as are granted over places ceded to the United States.

License. Itinerant vendors required to obtain state and local licenses. Inn-holders, victualers, keepers of certain public places (bowling alleys, etc.), non-resident hunters, insurance agents and brokers, those operating automobiles, and those engaging in certain occupations hazardous to their neighbors or their customers also required to obtain license.

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 *q. l.* and *d. b. a.*; replevin; 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 recognition. Eighteen months: stolen bonds and coupons, except by owner. Twenty years: witnessed notes, bank bills, specialties, real action, other judgments and all other personal actions. Suit begun when writ is made. Incapacity of plaintiff, death of either party before or within thirty days 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 after filing of affidavit of notice given of appointment of executor or administrator, 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 Dover, 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. Supreme Court may authorize a mortgage by a person in possession of an estate subject to a contingent remainder, executory devise, or power of appointment, and such mortgage is binding on all parties. 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. Mortgage on household furniture must state amount of loan, interest rate, and cost of procuring loan. Agreements, whether in form of note, lease, conditional sale, etc. or otherwise, that chattels bargained and delivered shall remain property of seller till paid for, must be in writing and 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 city or town where the pledgee resides, and after the expiration of the sixty days from the time of said recording.

Notaries. Appointed by Governor and Council; term seven years; may protest negotiable paper, take acknowledgments of deeds and other instruments, administer oaths, take depositions, and in general do all acts which may be done by notaries public according to the usages of merchants and authorized by law, and also all acts which may be done by justices of the peace. Required to keep record of protests, mercantile and marine.

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. 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, unless creditor would thus lose security he otherwise would have had.

Partnership. Usual common law rules prevail as to ordinary partnerships. Limited partnerships authorized by statute for transaction of mercantile, mechanical, or manufacturing business, but not for banking or insurance; must have at least one general partner, and one or more special partners, who contribute specific sum toward cash capital and are not liable for partnership debts beyond such sum; partners must sign certificate stating name of firm, name and residence of each partner, general nature of business, and amount of capital contributed by each special partner, and time when partnership shall begin and cease. This certificate must be acknowledged and recorded in the registry of deeds for each county where partnership is to have established place of business; within twenty days after such registry and on each renewal of partnership must publish a copy of certificate, else partnership shall be considered a general one. Not allowed to use names of any except general partners and no general word such as "company" in firm name. Special partner who allows his name to be used, or who makes any partnership contract is liable as general partner; also liable for any amount received by him in any way if partnership becomes insolvent. Suits shall be by and against only general partners, except where special partners deemed general. No voluntary dissolution unless certificate thereof recorded and published. Personal property of partnership, or interest of partner therein, exempt from attachment on mesne process, or seizure on execution for any individual liability of such partner; but is statutory provision for reaching same after judgment.

Powers of Attorney. Usual common law rules.

Probate Law. (See *Estates of Deceased Persons.*)

Protest. (See *Notes and Bills.*)

Records. Voluminous statutory provisions as to keeping records of births, marriages, deaths, deeds, mortgages, trademarks, acts of certain public officers, and of such other things as are usually made a matter of public record.

Redemption. Real estate sold on execution may be redeemed in one year. Attaching creditor may within forty-eight hours after notice redeem personal property of debtor which is subject to mortgage, pledge, or lien; may also redeem real estate subject to mortgage, or other lien. Special provisions for redemption of certain other special classes of property, such as buildings on leased lands, franchises, etc. (See also *Mortgages.*)

Replevin. (*See Actions.*)

Revision. General and public laws revised and consolidated in new revised statutes, which went into effect January 1, 1904.

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.

Service. Sheriff and each of his deputies shall serve writs and precepts within county, provided legal fees for service first paid; constable may, in limited actions, serve within his town; coroner shall serve when sheriff a party, or when office of sheriff vacant. Service may be in person or by leaving at last and usual place of abode. Service on non-resident, when property is attached, may be made on tenant, agent, or attorney, or in such manner as court directs. Voluminous provisions for service on counties, towns, and other corporations, and for service in special cases, such as libel for divorce, etc.

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 one year from sale to redeem by paying tax, costs, and 20 per cent interest from day of sale; residents, two years with 20 per cent interest from day of sale on whole sum of tax and costs. Land on which taxes are unpaid, sold on second Monday in July in year succeeding the year in which tax was assessed; 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 telegraph and telephone lines, collected by suit. Corporations, other than those especially provided for, pay a franchise tax of \$5.00 if authorized capital does not exceed \$50,000.00; of \$10.00, if capital does not exceed \$200,000.00; of \$25.00, if capital does not exceed \$500,000.00; of \$50.00, if capital does not exceed \$1,000,000.00; and the further sum of \$25.00 for each \$1,000,000.00, or fraction thereof, in excess of \$1,000,000.00. State taxes at 4 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. (*See Banks, Trust Companies.*)

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

Trust Companies. Organized under special charters; must keep reserve fund of at least 15 per cent of deposits; shareholders liable for debts to a sum equal to par value of shares owned, in addition to amount invested in said shares; if capital impaired share-holders are subject to assessment. 10 per cent of net earnings to be set aside each year as surplus. Annual tax on time deposits of one-half of one per cent.

Warehouse Receipts. Holder deemed true owner so far as to give validity to contract for sale of merchandise covered, or to protect one acting on faith of such ownership; but one taking from agent as security for antecedent debt gets no greater right than agent. Title to property passes by endorsement, but not in blank, to purchaser or pledgee in good faith. Property in warehouse may be attached as that of person named in receipt, or of last endorsee shown by books of warehouseman. Common law rules prevail generally.

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. Widow or widower may within six months waive provision in will of deceased husband or wife and claim same share in personal property as would have had in case deceased died intestate.

SYNOPSIS OF THE LAWS OF MARYLAND

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by SLINGLUFF & SLINGLUFF, Attorneys 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 on 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 court of the county, or superior court of 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. Defective acknowledgments made valid by Act. 1906, Ch. 342.

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. In each class, males are preferred to females. Bond is required with two sureties, or one of certain local surety companies where authorized by their charter to act as sole surety. When testator requests in will that executor be excused from giving bond, court only requires nominal bond for amount sufficient to pay estimated debts. Six months notice to creditors must be given by publication before estate is distributed. Personal property must be appraised, accounted for and distributed through the orphans' court of the county or city in which decedent resided. All sales must be authorized and ratified by the orphans' court. By Act of 1896, Ch. 246, above provisions were made applicable to "estates of persons absent and unheard of for above seven years." This act has been held unconstitutional. See case of Savings Bank of Baltimore vs. Weeks, Court of Appeals of Maryland June 16, 1906.

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 in certain counties. (*See Mortgages.*)

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 1904, Art. 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. Act 1904, Ch. 671, provides a means for the settlement of disputes between employers and employees by mediation or voluntary arbitration.

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, 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, either in contract or tort, 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. Imprisonment 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, attachments 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 1904, 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 located. 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 Exchange. (See *Notes*.) Bills of Exchange are defined and governed by negotiable instruments act (which see).

Bills of Lading. Order 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 1904, Art. 14]. Penalties are provided for acts and frauds which impair the value of these securities [Act 1890, Ch. 399.] No condition attached to "order" bill of lading shall limit negotiability, but such condition void.

Chattel Mortgages. Chattel mortgages are of same 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 the mortgage or bill of sale must 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. Acts 1900, Ch. 363, make it no longer necessary to show that the consideration for a promise to answer for the debt of another is in writing. 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 necessities 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. [Acts 1898, Ch. 437.] 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 1904, 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. Vendors' lien may be released in original deed or upon records where recorded. [Act 1906, Ch. 65.] Conveyances defectively acknowledged made valid by Acts 1903, Ch. 1.

Corporations are organized under the authority of the General Incorporation Law. See Code, Art. 23, 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.

Costs. Each party to a case is primarily liable for his own costs; judgments and decrees usually carry the costs with them. Non-resident plaintiffs can be required to give security for costs in both law and equity, and a failure to do so will result in a non suit.

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. Justices of the peace have jurisdiction to the amount of \$100. 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.

Creditors' Bills. Under the Acts of 1890, Ch. 390, when a person dies leaving real estate and not sufficient personal estate to pay his debts and cost of administration, the court, in a suit instituted by any creditor, may decree the sale of the real estate, or so much thereof as may be necessary to pay the debts. Funeral expenses not exceeding \$300 take priority over all other common creditors. The insufficiency of the personal estate is the basis of jurisdiction, and there must be an insufficiency left by the decedent, and not merely a deficiency at the time of filing the bill.

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 under State law 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. Testimony of non-resident witnesses can also be taken upon proper notice, as provided by Sec. 17 of Art. 35 of the Code of 1904.

Descent and Distribution of Property. As to descent, see Code 1888, Art. 46, and as to distribution, Code, Art. 93.

Divorce. Divorce comes within the jurisdiction of court of equity. Divorces are decreed 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. By act 1898, the husband's dower was created; an estate of the husband in his wife's estates of inheritance, exactly equivalent to the wife's dower in her husband's estate. A devise or bequest of real or personal property to the wife or husband 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 or widower renounces formally in writing, however, such provision made for her or him will within six months after the grant of administration on the estate of the deceased husband or wife, the dower right and the share of personal property remain undisturbed. (See *Married Women*.) [Act 1904, Ch. 661.]

Evidence. No person is incapacitated from giving evidence on the ground of religious belief, race, color, crime (except perjury) or interest. All parties to civil suits, themselves, their wives or husbands, are competent witnesses in their own cases except where one party to the contract or suit is dead, the other party is barred from testifying in his own behalf. In criminal cases the party charged shall at his own request, but not otherwise, be deemed a competent witness, but neglect or refusal to testify shall create no presumption against him.

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 thereafter 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, whether same consists of money, land, goods or money payable as insurance, benefit, or relief in the event of sickness, hurt, accident or death, 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.

Foreign Corporations. (See *Corporations*.) All foreign corporations except telephone, banking, insurance, railroads, electric light, construction companies, or pipe line companies now doing business in the

State or desiring to commence business, must, before transacting any business in this State through an agent or otherwise, file in the office of the secretary of State, accompanied by a deposit fee of \$25, a certified copy of its charter, with a sworn statement from the president or some other officer under its official seal, setting forth its authorized capital stock, the amount actually issued, the amount of assets and liabilities, the character of the business to be transacted in this State, designating its principal office, and the name of an agent upon whom process can be served. No foreign corporation can maintain any action at law or in equity in the courts of this State until these provisions are complied with.

Foreign Judgments. Judgments of the courts of other States certified under the act of congress, are proper causes of action against any person subject to the process of the courts of this State.

Fraud. When any false representation is 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. Horey*, 35 Md. 439. Every person buying merchandise in bulk shall demand and receive from the vendor a written statement under oath containing the names and addresses of all creditors with amount of indebtedness at least five days before the sale is consummated. The vendee at least five days before consummating such sale shall notify all of said creditors either personally or by registered mail of such proposed purchase. A sale or transfer of goods in bulk without such notice shall as to all subsisting creditors of the vendors be conclusively presumed fraudulent and void. [Act 1906, Ch. 431.]

Garnishments. (See *Attachments*.)

Guaranty Companies. All companies doing a surety or bonding business in this State must be authorized by the State wherein incorporated, and under its charter to become a surety upon bonds, etc. Must have a full paid up and safely invested capital of \$250,000 good and available assets exceeding liabilities (meaning outstanding debts), a premium reserved at the rate of fifty per cent of the current annual premiums of all outstanding bonds, and must file with State tax commissioner a certified copy of its charter and written application to do business in this State, and thereafter on the 31st day of December in each year, a statement verified under oath, stating the amount of its paid up cash capital, etc., in accordance with the Act of 1898, Ch. 302.

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 necessities of wife. Acts 1898, Ch. 457, gives husband same interest in wife's estate as wife has in husband's estate. Married women are especially authorized by the Acts of 1900, Ch. 633, to become partners and to contract with husband. Either can relinquish interest in other's real estate by joint or separate deed, or by agent or attorney properly constituted. [Acts 1900, Ch. 195.]

Injunctions are granted both at law and in equity. *In Law:* The plaintiff in any action at law (except ejectment and replevin), upon bringing the same, may in his order to the clerk, direct that the writ of summons shall be "with claim for injunction." Any party to any action at law after the commencement thereof, whether before or after judgment, may apply by a motion ex parte for an injunction. The declaration in an action at law must set forth sufficient ground upon which the claim for injunction is founded. *In Equity:* Injunctions may be granted at any stage of a proceeding on the application of any party thereto by motion, petition, or of the court's own motion directing or commanding any party to such cause to do or abstain from doing any act or acts, whether jointly or in the alternative, whether in the nature of specific performance or otherwise as named in such injunction, and the court may make such terms and conditions (as to security, etc.) as may seem fit and preliminary to the granting of such injunction. Any party to the cause, or against whom such injunction has been issued, may move to have the same discharged or dissolved, and an appeal is allowable from the action of the court. Injunctions become binding against the parties enjoined as soon as informed of the fact, whether by service or otherwise.

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.

Insurance Companies, when incorporated under general laws, capital stock must not exceed \$2,000,000, and except mutual insurance companies, be not less than \$100,000. One-fifth of whole capital stock must be paid in before company is competent to transact business; may be either mutual or stock company, or both combined. Life insurance companies are authorized to insure individuals against accidents, and to grant, purchase, or dispose of annuities. Life insurance companies when incorporated under the laws of this State, must have a guaranteed capital of not less than \$100,000, which must be invested in the securities of either the United States, State of Maryland, or city of Baltimore, and be deposited with the treasurer of the State of Maryland as a guarantee for the payment of its policies. Foreign insurance companies must have same qualifications as to capital as domestic companies, must appoint agent to reside in this State, and file in the clerk's office of the superior court of Baltimore city a certified copy of the vote of the directors appointing such agent, a certified copy of its charter together with a statement under the oath of the president and secretary to be renewed annually in January of each year, setting forth the name of the company, place where located, the amount of capital, amount actually paid in, detailed statement of assets and indebtedness, losses adjusted and unpaid. Foreign and domestic companies can only transact business in this State under their own proper or corporate name; all policies and contracts must be so headed and entitled. No discrimination can be made in favor of individuals of same class with equal expectation of life in the amount or payment of premium or rates for policies of life or endowment insurance, or in the dividend or other benefits payable thereon, or in any other of its contracts of insurance; can enter into no contract or agreement other than is plainly expressed in the policy. All agents representing foreign or domestic insurance companies doing business in this State before acting must comply with Ch. 520, Act 1902.

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 mortgages. 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*.)

Jurisdiction. (See *Courts*.)

License. All licenses are granted by the clerk of the circuit court of the respective counties of the State, or by the clerk of the court of common pleas of Baltimore city. Non-resident traveling salesmen are not required to take out a license in this State.

Liens. (See *Judgments*.) **Mechanic's Liens.** Every building erected, repaired, rebuilt, or improved to the extent of one-fourth of its value is subject to a lien for work done or materials furnished for or about the same. Act of 1898, Ch. 502, abolished lien for materials furnished for buildings in Baltimore city. Every machine, wharf, or bridge, constructed or repaired is subject in like manner as buildings are to a lien according to the provisions of Code 1888, Art. 63, Sec. 22. All boats or vessels are subject to a lien for materials furnished or work done in building, repairing, or equipping the same. To secure the lien and lay foundation for enforcing it, the material man must within six months after the last work has been furnished, file a claim in the superior court for Baltimore city, or in the circuit court for the county. The liens are enforced by *scire facias* or by bill in equity.

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 re-enacts the entire law in this State. Married women may hold and dispose of their property lawfully as if unmarried, but husband must join in conveyances of real estate to release his interest; the husband must unite in the conveyances of married women under 18 years; 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 necessities. 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 inquisition, and the finding remains in force, husband may convey after acquired property by separate deed, as if unmarried.

Mines and Mining. The common law in reference to mines and mining is enforced in this State. Mining companies formed under the general corporation law, Code 1888, Art. 23, Sections 7, 8, 9, and 10. No corporation under this act shall hold more than one thousand acres of land at any one time if such company is situated in Allegheny County, or more than five hundred acres if in any other county in this State except Garrett County where they may hold fifteen hundred acres, Acts 1906, Ch. 178, and its capital stock shall not exceed \$3,000,000, and the presence in person or by proxy of a majority in interest of the stockholders shall be necessary to form a quorum for business at any meeting of the stockholders or members. The president and directors of the company so formed are authorized to construct and operate a railroad with appurtenances from or near the mine to any convenient point that may best suit the convenience and interest of the company. Inspection and management of mines provided for by Acts 1902, Ch. 124.

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. Mortgagees are required to pay a tax of 8 per cent on the interest covenanted to be paid in the mortgage, in Worcester, Wicomico, Somerset, Carroll, Howard, Montgomery, Frederick, Washington, Garrett, and Dorchester Counties. No tax in Baltimore City and other counties.

Notaries. Notary Publics are appointed by the governor with the consent of the senate, are authorized to take acknowledgments, affidavits, depositions, etc., throughout the State. Fees for service are fixed by statute. [Code 1888, Art. 36, Sec. 23.]

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 1898, 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.

Partnerships. Code 1888, Art. 73, provides the manner in which limited and special partnerships are formed. Limited partnerships can be formed by any number of persons for the transaction of any business except insurance. Such partners are jointly and severally liable for the debts of the partnership. Special partners who are liable only to an amount equal to the fund contributed by them, must not exceed six in any one partnership. By the Acts of 1900, Ch. 633, married women may become partners.

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 prior to or 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.*)

Records. Deeds and mortgages must be recorded within six months from date in the clerk's office of the circuit court of the county in which the land is situated, or in the clerk's office of the superior court of Baltimore city, if it is in Baltimore city, and when properly acknowledged and so recorded, shall take effect as between the parties from said date. Code 1888, Art. 21. All deeds except mortgages may be recorded after six months from date, and when so recorded shall have as against the grantor, purchasers with notice, creditors of grantors, etc., becoming such after the recording, the same validity as if recorded in time. Recording is notice to all, and actual knowledge of an unrecorded deed is equal to recording.

Redemption. Whenever real estate is sold by tax collector, the owner thereof, prior to the sale, may redeem the same by paying into court to be paid to the purchaser within twelve calendar months from the date of such sale, the amount of the purchase money with interest thereon from the date of the sale. Collectors are required to report their sales to the circuit courts, and if no canases be shown to the contrary, after due notice by publication to persons interested to appear, the same are finally ratified and confirmed.

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. Bond must be given to the State of Maryland, and any party having an interest in the property may, upon breach of any covenant in bond, maintain an action in the name of the State for his or her use.

Revision. The various laws, prior to and including those passed by the general assembly at its session in 1888, are revised into the code of public general laws and the code of public local laws, known as the Code of 1888, as prepared by Mr. John P. Poe. The general laws of the State passed since 1888 are now revised and published in a supplement to the Code of 1888. Mr. Poe has just completed a revised Code which has been adopted by the General Assembly known as the Code of 1904.

Service (See *Courts*) is made returnable to the first days of each term of court. In Baltimore city, the second Monday of each month is rule or return day in the law courts. The second Monday of January, March, May, July, September, and November, are return days in the equity courts. Publication is made against non-residents once a week for four successive weeks, fifteen days before day fixed for appearance. Code 1888, Art. 16, Acts of 1896, Ch. 38, allows service of copy of order in lieu of publication.

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.

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. 130, repeals and re-enacts the sections of the code relating to "Revenue and Taxes."

Testimony. (See *Evidence, also Depositions.*)

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.]

Trust Companies can only be incorporated by special act of the legislature, and can only exercise such powers as are conferred by their charter. Full reports in writing must be made semi-annually on the last business days of the months of June and December, respectively, or within ten days thereafter to the treasurer of the State of Maryland, in accordance with the Act of 1892, Ch. 109.

Warehouse Receipts are made negotiable by statute (Code 1888, Art. 14) unless provided in express terms to the contrary on the face thereof, a full and complete title to the property in said instrument mentioned passes to and vests in bona fide holders thereof for value. Penalties are provided by the Acts of 1890, Ch. 399, for acts of fraud which impair the value of these securities.

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 his 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 testamentary 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 subpoena 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 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 appraisal. 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 chapter 116, Revised Laws, 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 as provided in the Revised Laws, Chapter 113, 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, or in any incorporated water district of said States, whose bonds or notes are a direct obligation on all taxable property of such district whose net indebtedness does not exceed 3 per cent of each 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 unincumbered 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 801 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 116 of Revised Laws 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 28 and 30 of said chapter 116, 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 depository. 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 bonds of Boston Terminal 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. By an act of 1902, chapter 483, Savings Banks may also invest in the bonds approved by the Commissioner of Savings Banks, of any Street Railway incorporated in this commonwealth the railway of which is situated wholly or in part therein, and which has earned and paid annually for five years last preceding, dividends of not less than 5 per cent per annum upon its outstanding capital stock. In the note of a citizen of Massachusetts with a pledge as collateral at not more than par, the bonds of Street Railway Companies in which Savings Banks are authorized to invest.

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. By Special Act of 1903, Chapter 437, the law of business corporations was revised and applies to all corporations organized in this commonwealth for the purpose of carrying on business within the commonwealth for profit, except the following: Banks, savings banks, co-operative banks, trust companies, surety or indemnity companies, safe deposit companies, insurance companies, railroad or street railway companies, telegraph or telephone companies, gas or electric light, heat or power companies, canal, aqueduct or water companies, cemetery companies, or any corporations which now have or may hereafter have the right to take or condemn land, or to exercise franchises in public ways, and corporations to buy and sell real estate, or to sell and distill intoxicating liquors.

Under this act three or more persons may associate together and form

a corporation for carrying on any lawful business not included in the above provisions. Such a corporation must have a capital of not less than \$1,000. There is no maximum limit. The shares must have a par value of not less than \$5. The stock may be divided into two or more classes with such preferences, voting powers, restrictions and qualifications as may be fixed by the agreement of association. Upon due organization of the associates and filing a copy of the agreement of association with the commissioner of corporations and on payment of a fee of one-fourth of 1 per cent of the capital, but not less than \$10, a certificate of incorporation is issued by the secretary of state. The capital stock may be issued for cash property, tangible or intangible services or expenses. The amount of capital stock may be increased from time to time. The corporation must have not less than three directors, president, clerk and treasurer. The directors, treasurer and clerk are elected by the stockholders. The president is chosen by and from the board of directors. The clerk must be a resident of the Commonwealth. Meetings of stockholders must be held within the Commonwealth, but directors may meet within or without the Commonwealth. Voting by proxy is permitted, but no proxy dated more than six months before the meeting named is valid. Any corporation may hold, purchase, convey, mortgage or lease such real or personal property as the purposes of the business may require.

Every such corporation is required to file an annual report of its condition, and if its capital stock is over \$100,000, to file a written statement under oath by an auditor. It is also required to make an annual return to the tax commissioner. Every corporation organized under the general law is taxable locally upon all real estate and machinery owned by it in the Commonwealth, and is subject to a franchise tax aggregate market value of its shares after deducting therefrom the value of real estate and machinery subject to local taxation as above, and the value of any property of the corporation situated in another State or country and subject to taxation there.

Every Foreign Corporation which has a usual place of business here, or is engaged here permanently or temporarily in the construction, erection, alteration or repair of a building, bridge, railroad, railway, or structure of any kind, shall before doing business here appoint the commissioner of corporations its attorney for the service of process, such authority to continue as long as any liability remains outstanding against it in this Commonwealth; and shall file with the commissioner of corporations a copy of its charter and by-laws, and a certificate setting forth its name, location, names and addresses of its officers, date of its annual meeting, amount of its capital authorized and issued, the number and par value of its shares, the amount paid thereon, and details of any payment thereof not made in money. They are required to file annual statements with the commissioner of corporations showing their condition. Officers of a foreign corporation are liable for all debts and contracts made while they are such officers if any statement or report required by law made by them is known to be false.

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 alcohol 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. A husband shall on the death of the wife hold one-third of her land for his life, this interest is known as curtesy. If the deceased leaves no issue, the surviving husband or widow shall take \$5,000 and one-half of the remaining real estate and personal property. If deceased leaves issue, the surviving husband or widow takes one-third of the remaining real estate and personal property. If deceased leaves no kindred, a surviving husband or widow shall take the whole of the remaining personal property.

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 23d, April 19th, May 30th, July 4th, first Monday in September, Thanksgiving Day, Christmas or the day following when any of the four days first mentioned or Christmas day occurs on Sunday. (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 dischargeable 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. No bond can be issued by a corporation at more than 4 per cent.

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. (See *Dower and Curtesy*, as to rights of husband in estate of deceased wife.)

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 in Revised Laws, Ch. 73, 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, 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 12 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 who shall subscribe their names to the same as such witnesses, and may be acknowledged before any judge, clerk or commissioner of a court of record, a notary public, a justice of the peace, or master-in-chancery. 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 hand-writing 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 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 county where taken.

1. In case of natural persons acting in their own right:

On this...day of...19... 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 said 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 woman's acknowledgment, in same form as if she were so,

Notaries public must affix to certificates of acknowledgement date of expiration of their commission.

Actions at law and actions in chancery; circuit courts for the respective counties in this State have jurisdiction of both. Actions at law substantially the same as at common law; suits in chancery the same as the High Court of Chancery in England. *Actions Ex-contractu*—Assumpsit debt and covenant may be commenced by original writ, or by filing declaration and entering rule to plead and serving copy thereof. Assumpsit also commenced by writ of attachment, where the plaintiff annexes thereto the requisite affidavit. (See *Attachments*.) *Actions Ex-delicto*—For injuries to persons and to personal property, comprising actions on the case, trespass, trespass on land, and trespass on and trover, commenced by original writ or by declaration; trover case and trespass on the case may be brought by writ of *capias ad respondendum*, where an order for bail is granted. *Actions for the Recovery of any Real Estate or the Possession thereof*—Ejectment, trespass on land, and trespass on the case for injuries to real estate must be brought in the county where the land is situated, excepting that when defendant is not an actual resident of the county or when said county is unorganized, such actions of trespass on lands or on the case for damages on account of injuries to lands may be brought in any county where defendant may be found. Actions upon contracts and for slander and libels must be brought in the county where one of the parties shall reside, but transitory actions upon contracts can be brought against non-residents of the State in any county where service of process is obtained. Assumpsit may be brought in any case where debt will lie; actions on the case and trespass on the case may be brought where either action is applicable at common law; replevin may be brought on filing the requisite affidavit. (See *Replevin*.) *In Chancery*—The form of suit is by bill of complaint and the process is the subpoena, which may be served upon defendants in any county of the State.

Affidavits in actions at law, of the amount due on open and stated accounts served with process as commencement of suit; unless denied by affidavit of the defendant with his plea, 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. Notary must affix date his commission expires.

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 in 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. No woman can be arrested on civil process.

Assignments (commonly called *Common Law Assignments*) for the benefit of creditors shall be void unless same be without preferences and be all the property of the assignor not exempt from execution. Instruments of assignment or duplicate with an inventory, a list of creditors, and the bond of the assignee must be filed in clerk's office of the circuit court of the county where assignor resides, or if he is non-resident of the state then of the county where the assignee resides, or if neither are residents then of the county where the assigned property is located.

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.

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 \$109,000, 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 their 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 or Territory in the United States which is duly authorized; in first mortgage bonds of any steam railway corporation organized under the laws of any State of the United States, provided such corporation for five years prior thereto has paid not less than 4 per cent dividends annually, and not defaulted in payments, principal or interest, of any secured debts; in first mortgage bonds of any electric railroad, street railway, gas or electric light or power company organized under the laws of Michigan, if such company has for five years paid annual dividends of not less than 4 per cent on its capital stock for five years prior, and has not defaulted in payment of its secured debts, principal or interest, provided that cost of construction or equipment shall exceed by at least 50 per cent of bonded debts and be free of other liens, and shall have earned more than enough to pay all interest on said bonds and not less than 4 per cent per annum dividends; in bonds of steamship companies secured by mortgages on steel steamships of at least 5,000 tons capacity, upon the great lakes, issued at the time of completion and enrollment of any such ship, or within one year thereafter, mortgage such bonds shall require at least 10 per cent of the total to be retired annually, beginning within two years of date of such issue; mortgagor or some person for him having knowledge of the facts shall, before the filing of same, make and annex thereto an affidavit setting forth that the consideration thereof was actual and adequate, the same was given in good faith for the purpose; therein set forth; no officer shall receive such

instrument or file same in his office until such affidavit is made and annexed thereto. Every person who shall knowingly make any false statement in such affidavit shall be guilty of the crime of perjury. Also in negotiable notes secured by any such above mentioned classes of security or upon notes or bonds secured by 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. Any person's total liability to any such bank for moneys advanced shall not exceed one-tenth of the amount of the capital and surplus of such bank—this not to apply to real estate loans and loans on collateral securities deposited with the bank and authorized by law. Not more than three-fourths of any bank's assets shall be loaned or invested in steam railway bonds, and not more than one-tenth in bonds of any one railroad corporation, and not more than one-tenth to any one person, corporation, or firm on the collateral pledges authorized by law. There shall be a Board of Commissioners for the purpose of passing on the securities hereinbefore mentioned, to be called the "Securities Commission," whose duty it shall be to examine financial conditions of corporations issuing the aforementioned bonds, and certify as to its finding as to any issue of such bonds, in a book to be kept in the State Banking Department for that purpose. Expenses of the Commission examining bonds shall be paid by the person or company applying to have same certified as a legal investment. 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 usance. 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. Savings depositors preferred in distribution of savings department funds.

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 reorganization.

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 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, convey, 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 personal security 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.

Preferences. No bank or bank officer shall give preferences to any depositor or creditor by pledging the assets of the bank as collateral security therefor. It shall be unlawful for any bank to issue its certificate of deposit for the purpose of borrowing money. Nor shall any bank make partial payments upon certificates of deposit. No overdraft of more than ninety days' standing shall be allowed as an asset of the bank.

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 stockholder 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 Exchange and Promissory Notes—Negotiable. Governed by Act 265, Public Acts 1905, relating to negotiable instruments. A statute in terms almost identical in twenty-nine states and the District of Columbia.

1. A negotiable promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinate future time, a sum certain in money to, or to the order of a specified person, or to bearer. 2. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by person giving, requiring person addressed to pay it on demand, or at a fixed or determinate future time, a sum certain in money, to order or to bearer.

Inland. Is one purporting on its face to be drawn and payable within this state.

Foreign. Any other than an inland bill. A check is a bill of exchange drawn on a bank, and the law applicable to a bill of exchange payable on demand, applies to a check.

Certainty. Sufficient if the money is payable with interest, by installments, and that upon default, the whole amount shall become due, or with exchange at a fixed or current rate, or with costs of collection, or an attorney's fee, if not paid at maturity.

Unconditional. The particular fund indicated, or a particular account to be debited with the amount, or statement of the transaction. But an order or promise to pay out of a particular fund is not unconditional.

Determinable. Future time expressed; if at a fixed time after date or sight, or on or before such fixed time, or on a fixed period after a specified event certain to happen; any contingency not sufficient. May authorize sale of collateral securities, waive benefit of any law for advantage or protection of obligor; give holder election to require something to be done in lieu of payment of money. Not affected if not dated nor specific value given, or place where drawn or payable, or bears a seal, or specifies particular currency of payment. But does not alter any statute requiring the nature of consideration to be stated.

Payable on Demand. If expressed payable on demand, or at sight, or on presentation, or if no time of payment is specified; and if issued, accepted, or endorsed, when overdue is, as regards person issuing, accepting, or endorsing, payable on demand.

Payable to Order. When to the order of a specified person or his order; may be to any payee not maker, drawer, or drawee, or to the drawer or maker, or drawee, or to two or more payees jointly, and the payee must be named or indicated with certainty.

Payable to Bearer. When so expressed; or to a person therein or bearer; or payable to a fictitious person, and such fact known to person making it so payable; or when payee is not the name of any person, or

when the only or last endorsement is a blank endorsement. Dated instrument, acceptance, or endorsement of such date deemed prima facie the true date thereof. Ante-dated and post dated valid, if not for illegal or fraudulent purpose, and the person to whom delivered acquires title date of delivery. Blank date; holder may insert true date, if paper be payable at a fixed period after date or after sight. Insertion of wrong date does not invalidate in hands of subsequent holder in due course, but as to him the inserted date is regarded as the true date. The holder prima facie authorized to complete blank in any material particular. Signature on blank paper delivered by the maker of same, in order to convert same into negotiable instrument, prima facie authority to fill up as such for any amount; to hold maker, or any party thereto prior to completion, must be filled up strictly according to authority given and within reasonable time; but if negotiated to holder in due course after such completion, it is as valid as if filled up according to authority given. If completed instrument is not delivered, it will not, if completed and negotiated without authority, be valid in hands of any holder as against any person whose signature was placed thereon before delivery. Every contract on a negotiable instrument is incomplete and revocable, until delivered for the purpose of giving effect thereto as between immediate parties and a remote party, other than a holder; in due course delivery must be made by, or under authority of party making, drawing, or accepting, or endorsing, as the case may be; delivery may be shown to have been conditional, or for special purpose only, and not for transferring the property in the instrument. But where holder in due course, a valid delivery by all parties prior to him, so as to make them liable to him, is conclusively presumed. Where instrument not in possession of party whose signature appears thereon, valid and intentional delivery by him presumed, until contrary is proved. The sum payable in words is the sum payable; if the words are ambiguous or uncertain, reference to be had to the figures to fix amount. Instrument bearing interest, and date not specified from which it runs, the interest runs from date of such instrument, which, if undated, from the issue thereof. Any conflict between written and printed provisions, the written prevails. Where instrument is so ambiguous that there is a doubt whether bill or note, holder may treat it as either. Signature so placed that it is not clear what capacity the signer intended to assume, he is deemed an endorser. The words "I promise to pay," two or more persons signing, deemed jointly and severally liable thereon. Per-*on* signing trade or assumed name liable to same extent as if he had signed his own name. Signature may be made by duly authorized agent; no particular form of appointment required. Authority may be established, as in other cases. Merely describing himself as agent or representative character, without disclosing his principal, does not exempt the agent from personal liability. Signature by procuracy operates as notice that agent's authority is limited, and principal bound only in case agent acted within limits of authority. Indorsement by infant or corporation passes property in instrument, notwithstanding want of capacity to incur liability. Forged signature wholly inoperative, unless party is precluded from setting up the forgery, or want of authority. Consideration of negotiable paper deemed prima facie for valuable, and every person's signature thereon, a party thereto for value. Absence, or failure of a defense against any person not a holder in due course—partial failure of defense *pro tanto*. Accommodation party, maker, drawer, acceptor, or endorser is liable to holders for value. Endorsement must be of entire instrument; if paid in part, may be endorsed as to residue. Special endorsement specifies to whom or whose order payable.

Blank Endorsement. Specifies no endorsee, and thereby is payable to bearer, and is negotiable by delivery. May be converted to special by writing over endorser's signature any contract consistent with character of endorsement. Restrictive endorsement prohibits further negotiations, or constitutes endorsee agent of endorser, or vests the title of endorsee in trust; confers the right upon endorsee: to receive payments; to bring any action that endorser could; to transfer his rights as such endorsee, but all subsequent endorsees acquire only the title of first endorsee. Qualified endorsement constitutes endorser a mere assignor of title; may be made by adding to endorser's signature the words "Without recourse," or words of similar import. (Conditional endorsement; party required to pay may disregard condition and pay endorsee, whether condition fulfilled or not, but endorsee will hold same, or proceeds thereof, subject to rights of person endorsing conditionally. Special endorsement of instrument, payable to bearer may be further negotiated by delivery, but special endorser is liable to only such holders as make title through him. Endorsement payable to two or more persons who are not partners, all must endorse. Endorsement to cashier or other officer of a bank or corporation deemed payable to bank or corporation of such officers. May be negotiated by endorsement of such bank, or corporation, or officer. Endorsement in representative capacity may negative personal liability in proper terms. Endorsement bearing no date after maturity, deemed prima facie effected before instrument overdue. Place of endorsement, except where contrary appears, presumed prima facie at place where dated. Striking out endorsement; holder may at any time, any endorsement not necessary to his title. Transfer without endorsement; holder may, of instrument payable to his order, for value. Vests in transferee such title as holder had, and the right to have such holder's endorsement. Prior party negotiating; when negotiated back to him, such party may further negotiate same, but not entitled to enforce payment against any intervening party to whom he was liable. Holder in due course is: a holder who has taken the paper, that is complete and regular upon its face, became holder before it was overdue and without notice of any previous dishonor, took it in good faith and for value, had no notice at the time negotiated to him of any infirmity therein, or in the title of the person negotiating it. If payable on demand, and is negotiated an unreasonable length of time after issue, holder not deemed in due course. Notice of infirmity in instrument, or defect in title before holder has paid full amount agreed, he will be deemed holder in due course, only to extent of amount paid by him. Title of holder deemed defective, when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or illegal consideration, or when he negotiates it as breach of faith or in fraud. Holder not in due course: instrument subject to same defenses as if same were non-negotiable. Holder deriving title through a holder in due course, and not himself a party to any fraud or illegality, has all the rights of such former holder, in respect of all parties prior to the latter. Every holder deemed prima facie in due course. But when shown that title of any person who has negotiated this paper, was defective, the burden is on the holder to prove that he, or the person from whom he claims he has acquired title as holder in due course. The maker engages he will pay according to the tenor; admits existence of payee, and has then the capacity to endorse. The drawer admits existence of payee and has then capacity to endorse; engages that on due presentment, same will be accepted or paid, or both; and that if dishonored, and necessary proceedings are taken thereon, he will pay amount thereof to holder or subsequent endorser. The acceptor engages to pay according to tenor of acceptance; admits existence of drawer, genuineness signature, capacity and authority to draw; existence of the payee and his capacity to endorse.

Endorser. A person placing his signature upon instrument otherwise than as maker, drawer, or acceptor, is deemed an endorser. Irregular endorser: a person not otherwise a party, places his signature in blank before delivery, is liable as endorser; if instrument is payable to order of a third person, he is liable to the payee, and all subsequent parties; if the same is payable to the order of the maker, or drawer, or to bearer, he is liable to all parties subsequent to the maker or drawer; if he signs for accommodation of payee, liable to all parties subsequent to payee. Warranty: Every person negotiating by delivery or qualified endorsement, warrants that instrument is genuine; that he has a good title to it; that all prior parties had capacity; that he has no knowledge of any fact impairing its validity. Persons negotiating public or corporate securities other than bills or notes, do not thereby warrant the capacity of all prior parties. Every endorser warrants to all subsequent holders in due course, same as above specified warrants, and that at the time of his endorsement the instrument is valid. Endorsers engage that on due presentment, it shall be accepted or paid, or both, according to its tenor; that if dishonored, and necessary proceedings thereon be duly taken, he will pay the amount thereof to the holder, or any subsequent endorser who may be compelled to pay it. Endorsers are liable as respects one another prima facie in the order they endorse; joint payers or joint endorsers are deemed to endorse jointly and severally. Where broker, or other agent, negotiates paper without endorsement, he incurs all the liabilities of a warrantor, same as any person negotiating by delivery, or by a qualified endorsement, unless he discloses name of his principal and the fact that he is acting only as agent. Presentment for payment; necessary to charge drawer and endorsers on day paper falls due; payable on demand must be made within a reasonable time after date of issue of the paper; but as to bills of exchange payable on demand, presentment for payment within a reasonable time after the last negotiation thereof, sufficient; must be made by the holder or some person on his behalf at a reasonable hour on a business day, to the person primarily liable, but if he is absent or inaccessible, to any person found at the place of payment; to be made at the specified place of payment; where none specified in the paper, then to the place of address therein given; if no place or address given, then at the usual place of business or residence of party to make payment; in any other case, wherever such persons can be found, or to his last known place of business or residence. Instrument must be exhibited to such person from whom payment demanded, and delivered up on payment; if payable at bank, must be during banking hours; if person primarily liable is dead, and no place of payment is specified, presentment to personal representative, if any there be, and with reasonable diligence can be found, persons liable as partners, and no place specified, present to any one of them, even after dissolution of firm; not required to charge drawer when he has no right to require drawee or acceptor to pay; nor to an endorser, where paper was made or accepted for his accommodation and no reason to expect payment; delay excused when caused by circumstances beyond control of holder and not imputable to his default, misconduct, or negligence; when cause ceases, present with reasonable diligence; dispensed with after exercise of such diligence, or where drawer is a fictitious person, or by waiver, express or implied. Instrument dishonored; by non-payment when duly presented for payment and refused, or cannot be obtained, or excused, and over due, and unpaid. Parties secondarily liable: when dishonored by non-payment, immediate right to recourse to all accrues to holder. Maturity: at time fixed therein for payment without grace; if it falls upon Sunday or a holiday, is payable on next succeeding business day; due on Saturday, next succeeding business day, except paper payable on demand, may at option of holder, be presented before 12 o'clock noon on Saturday when entire day not a holiday. Time computed: paper payable at fixed period after date, after sight, or after happening of a specified event, determined by excluding day from which time is to begin to run and including date of payment. Payable at bank: equivalent to order to bank for account of principal debtor thereon. Payment in due course: when made at or after maturity to the holder, in good faith and without notice, that title is defective. Notice of dishonor: must be given to drawer, to each endorser, by holder or by or on behalf of any party who might be compelled to pay to holder having right to reimbursement from party to whom notice is given; may be given by an agent in his own name or name of party entitled to give such notice; where given by holder, enures for the benefit of all subsequent holders, and prior parties having right of recourse against party to whom given; given by, or on behalf of a party entitled to give notice, enures for benefit of holder, and all parties subsequent to party to whom notice is given; dishonored in hands of an agent, he may give notice to parties liable thereon, or to his principal alone; if to principal, must do so within same time as if he were holder, and principal, upon receipt of such notice, has same time to give notice as if agent an independent holder; notice need not be signed, and insufficient written notice may be supplemented and validated by verbal communication; misdescription of paper does not vitiate notice, unless party to whom given is in fact misled thereby; notice may be in writing or merely oral; in terms identify the paper and that it has been dishonored by non-acceptance or non-payment; given by delivering it personally or through the mails; given to party himself, or to his agent in that behalf; if any party to be notified is dead, and it is known to party giving notice, same must be given to personal representative, if any, and he can be found with reasonable diligence; if none, notice may be sent to last place of residence, or last place of business of deceased to partners, notice to any one of them, even after dissolution of firm; to joint parties, or not partners, notice to each of them, unless one has authority to receive same for the others; to adjudged bankrupt or insolvent, or one who has made assignment for benefit of creditors, notice, either to party himself, or to his trustee, or assignee.

Time of Notice may be given soon as paper is dishonored; where both parties reside in same place, must be given before the close of business on day following, if given at place of business; and if at place of residence, before the usual hours of rest on day following; and, if sent by mail, must be deposited in postoffice in time to reach him in usual course on the day following. Where parties reside in different places, if by mail, must be deposited in postoffice in time to go the day following dishonor, or if no mail at a convenient hour that day, by next mail thereafter. If given otherwise than through the postoffice, then within the time notice would have been received in due course of mail if given within time specified for mailing; notice duly addressed and deposited in postoffice, sender claimed to have given notwithstanding any miscarriage in mails; is deposited in postoffice, if at any branch or letter box under control of Postoffice Department. Party receiving notice has, after receipt, same time for giving notice to antecedent parties that the holder has; where party has added an address to his signature, notice must be sent to that address; if address is not given, then either to the postoffice nearest his place of residence or where he is accustomed to receive his letters, or be sent to his place of business, if different from place of residence, or if he is sojourning in another place, to that place; if actually received within the time specified it will be sufficient, though not sent as above specified; may be waived before or after the required time for giving notice, and such waiver may be expressed or implied, and, if embodied in the paper, is binding on all parties, but if written above endorser, binds him only;

waiver of protest of foreign bill of exchange or other paper is deemed to be waiver of formal protest and of presentment and notice of dishonor; notice dispensed with when, after reasonable diligence, it cannot be given to or does not reach the parties sought to be charged; delay in giving notice excused when caused by circumstances beyond control of holder, and not imputable to his default, misconduct, or negligence; and where such cause ceases to operate, must be given with reasonable diligence.

Notice to Drawer Need not Be Given. Where drawer and drawee are same person; where drawer is fictitious or without capacity to contract; or where drawer is person to whom paper is presented for payment, or where drawer has no right to expect or require drawee or acceptor, will honor the paper; or where the drawer has countermanded payment.

Notice Need not Be Given to Endorser. Where drawer is a fictitious person or person having no capacity to contract, and endorser was aware of that fact at the time he endorsed; or where endorser is the person to whom the paper is presented for payment; or where the paper was made or accepted for his accommodation.

Notice of Non-Payment. Where due notice of non-acceptance has been given, is not necessary, unless in the meantime paper has been accepted. If no notice of non-acceptance is given, it does not prejudice the rights of a holder in due course subsequent to the omission.

Protest of Paper may be made, but is not required except in the case of foreign bills of exchange.

Bill of Exchange. Not assignment of fund in drawee's hands; drawee not liable unless he accepts; may be addressed to two or more drawees jointly, but not to them in the alternative or succession; may be treated as promissory note if drawer and drawee are same person, or if drawee is a fictitious person, or one not having capacity to contract; drawer or any endorser may insert thereon name of person (called the referee) to whom holder may resort in case of need in case bill is dishonored.

Acceptance. Must be in writing signed by drawee; signifies his assent to the order, and that he will pay in money; holder may require that acceptance be written on the bill; if written on separate paper and not on the bill it does not bind acceptor to anyone but a person to whom it is shown, and who on the faith thereof receives the bill for value; promise in writing to accept bill before drawn is deemed actual acceptance in favor of every person who on faith thereof receives the bill for value; drawee is allowed twenty-four hours after being presented, to decide to accept; date as of day of presentation.

Kinds of Acceptances. (1) *General assents* without qualification to the drawer's order. (2) *Qualified* varies the effect of the bill, makes payment dependent on a condition—or to pay part, or to pay only at a particular place, or as to payment, on acceptance, by less than all of the drawers; holder may refuse to take such qualified acceptance and treat bill as dishonored; if taken, drawers and endorsers are discharged if they, within reasonable time after notice thereof, dissent to the holder.

Presentment for Acceptance must be made if bill is payable after sight, or in any other case where necessary to fix maturity of bill, or when the bill expressly requires, or if payable elsewhere than at residence or place of business of drawee; in no other case is presentment for acceptance necessary to render any party to bill liable. Such presentment must be made by holder, or on his behalf, at a reasonable hour on a business day, before bill is overdue, to drawee or to someone authorized to accept or refuse on his behalf; if two or more drawees not partners, to each and all of them, unless one is authorized to accept or refuse for all, to him only; if drawee is dead, to his personal representative; if drawee is bankrupt or an insolvent, or assigned for the benefit of his creditors, to his trustee or assignee; may be presented on any day hereinbefore specified for presentment for payment; where bill is payable elsewhere than at place of business or residence of drawee, and holder has not time, with reasonable diligence, to present for acceptance before presenting for payment on day it falls due, delay is excused; may be treated as dishonored for non-acceptance, where drawee is dead or has absconded, or is a fictitious person, or has not capacity to contract by bill; is dishonored if acceptance required is refused or cannot be obtained, or when presented is excused and bill is not accepted.

Holder's Duty. Bill not accepted as required, to treat bill as dishonored for non-acceptance. Holder's rights, if bill is not accepted, are immediate right of recourse against drawers and endorsers, and no presentment for payment is necessary.

Protest of Foreign Bill. Necessary, if dishonored by non-acceptance, and if dishonored by non-payment where not previously dishonored for non-acceptance; and if not protested discharges drawers and endorsers. Protest must be made; must be annexed to bill or contain copy thereof, must be under the hand and seal of the notary; must specify time and place of presentment, the fact that presentment was made and manner thereof, cause or reason for protest, demand made and answer given, or fact that drawee could not be found. May be made by notary public, or by any respectable resident of place where dishonored in the presence of two or more credible witnesses; must be made on day of dishonor, unless excused; if bill is duly noted, protest may be subsequently extended as of date of noting; must be protested at place where dishonored: except when a bill is payable at a place of business or residence other than that of the drawee, and has been dishonored for non-acceptance, it must be protested for non-payment at place where expressed to be payable. Where acceptor has been adjudged bankrupt or an insolvent, or has assigned for the benefit of creditors before the bill matures, holder may, for better security, cause bill to be protested. Protest may be dispensed with by any circumstances which would dispense with notice of dishonor.

Bill lost or destroyed or wrongly detained from person entitled to hold, protest may be made on a copy or written particulars thereof.

Acceptance of Bill for Honor. Where bill is protested for non-acceptance or for better security, and is not overdue, any person not a party liable thereon may, with consent of holders, accept the bill *supra* protest for the honor of the person for whose account the bill is drawn; and if for one party only there may be further acceptance by a different person for the honor of another party, and may be for part only of sum for drawn. Acceptance for honor must be in writing and specify it is for honor, and signed by acceptor for honor; and for whose honor made, otherwise will be deemed for the honor of the drawer. Acceptor for honor engages he will on presentment pay the bill according to terms of his acceptance provided it shall not have been paid by the drawee and that it has been presented for non-payment and notice of dishonor given him; maturity of bill payable after sight and accepted for honor calculated from date of noting for non-acceptance, not from date of acceptance for honor.

Dishonored Bill, accepted for honor, *supra* protest, or contains a reference in case of need, must be protested for non-payment before presented to such acceptor for honor or referee in case of need for payment. Payment for honor may be made by anyone for any person liable on any

bill protested for non-payment, or for any person for whose account it was drawn; must be attested by notarial act of honor appended or form an extension to it, and such notarial act must be founded on a declaration by the payer or his agent of his intention to pay for honor, and for whose honor he pays. Such payer paying the holder is entitled to receive both bill and protest, and is subrogated for and succeeds to rights and duties of the holder.

Bills of Exchanges drawn in a set, each part numbered, and referring to the others, the whole of parts constitute one bill. The holder of part whose title first accrues is the owner of the bill as between the different holders. If the holder of a set endorses two or more parts to different persons he is liable on each part, and every subsequent endorser is liable on the part he has endorsed as if a separate bill.

The Acceptance may be written on any part and on only one part; where acceptor pays a part not bearing the acceptance, and without requiring the one accepted to be delivered up to him, and that one is outstanding in the hands of a holder in due course, he is liable to such holder—otherwise the payment of any one part of a bill discharges the whole bill.

A Bank Check. Must be presented within a reasonable time after issue, or the drawer will be discharged from liability thereon to the extent of the loss caused by delay. Certification of check by bank on which drawn is equivalent to an acceptance. Where holder procures its acceptance or certification by bank, the drawer and endorsers are discharged from liability. Check is not an assignment of the funds of the drawer; bank is not liable thereon until it accepts or certifies the check.

Bills of Lading governed by the common law.

Chattel Mortgages and bills of sale intended as security are absolutely void as against creditors or subsequent purchasers, and mortgages in good faith without actual notice thereof, unless such mortgages or bills of sale, or true copies thereof, are filed in the city or township clerk's office where the mortgagor resides, or if a non-resident of the State, filed in city or town clerk's office wherein the property is located; before filing same mortgagor or some person on his behalf must make and annex to the mortgage an affidavit showing that the consideration was actual and adequate and same was given in good faith for purposes therein set forth; if withheld from the files are postponed to all indebtedness contracted after the date and prior to date of filing. Such mortgage, etc., are securities, for the debt—give no legal title to the property until foreclosed by sale under the power of sale or by suit in chancery, and such mortgage, etc., cease to be valid against judgment creditors, purchasers, and lienors, without actual notice thereof, after one year, unless within thirty days before the expiration of that year, and each succeeding year, they are renewed by affidavit filed in the said clerk's office, showing actual amount of unpaid mortgage debt. The fraudulent removal, disposition, concealment, or appropriation of the mortgage chattels is a criminal offense, felony, or misdemeanor, according to the value thereof so disposed of.

Collaterals. Common law governs. Stocks, bonds, or other personal 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.

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 by proceedings in probate courts.

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.

Conveyances. Deeds, mortgages, and contracts for the sale of real estate or any interest therein, other than leases for a term not exceeding one year, or of any trust or power over lands, must be in writing, and if executed and acknowledged by grantors or vendors and subscribed by two witnesses in their presence, may be recorded in the register of deeds office of the county wherein the land is situated. If not so executed, acknowledged, and recorded, they are void as against subsequent purchasers or incumbrancers for a valuable consideration, who have not had actual notice of such conveyance, but the consideration thereof need not be expressed in 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, are void. Deeds given as security on lands must be recorded in the mortgage books—otherwise not any notice to purchasers, etc.

Corporations. Banks, mining and manufacturing, insurance—fire, marine and life—printing and publishing, mercantile, railroad, street railways, co-operative mutual benefit associations, co-operative savings associations, religious societies, and municipal corporations, may be organized under general laws existing for the purpose. All corporations and associations which are required by law to file articles of associations with the secretary of the State and every foreign corporation must pay a franchise fee to secretary of State of one-half of one mill on each dollar authorized capital and proportionately on any increase of capital, not less than five dollars in any case. 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. Building and loan associations may be organized under Act No. 17, Public Acts of 1901, for the purpose of improving and building home-steads, removing encumbrances therefrom, and loaning money to the members. Secretary of State has supervision thereof. Foreign building and loan associations, before doing any business in this State, shall procure from the Secretary of State certificate of authority to do so—filing copies of its articles of incorporation, by-laws and rules governing it, and of its certificates and all printed matter issued by it, together with a statement of its financial condition. It shall deposit \$100,000 with the Secretary of State in cash or bonds of the United States, of any State of the United States, or bonds of any county or municipal corporation in Michigan, or mortgages, first liens on improved and productive real estate located within this State. [Act No. 14, Public Acts 1901.] Partnership associations in which the capital subscribed alone shall be liable for debts may now become incorporated under Act 244, Public Acts 1903.

Costs in all actions at law are granted to prevailing parties in all courts, usually called taxable costs, comprising necessary disbursements, to the clerk and officers of the court, regulated by the statutory fee bill and rules of the courts, including witness fees and an attorney fee, which does not exceed \$25. In suits in chancery the allowance of costs to either party is discretionary with the court, but if granted by decree, practically the same as in action at law, except solicitor's fees, which do not exceed \$30 on final decree. In the supreme court the costs of printing record and briefs, and stenographer's fees for copy of the record to print, and attorney and solicitor's fees not exceeding \$30, are taxable under the rules of the court. In justices' courts the fees of the court and officers and witnesses, and in some cases attorney's fees not exceeding \$5, are granted to prevailing parties.

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, exclusive jurisdiction in actions of tort where damages alleged exceed \$100, and in actions on contracts where damages alleged exceed \$500; appellate jurisdiction from justice's and probate courts; as circuit courts in chancery equity jurisdiction co-extensive with court of chancery in England; and certain chancery jurisdiction of causes prescribed by statute; and have jurisdiction of all criminal cases for felonies excepting within the limits of municipal courts having jurisdiction. 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 and public roads. 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.

Creditors' Bills may be brought in the circuit courts of the respective counties in chancery: 1. Where executions duly issued upon final judgments or decrees of such courts have been returned unsatisfied, in whole or in part, to reach the equitable interests, things in action, and all other property not subject to levy under execution. 2. Where an execution has been levied upon real or personal property fraudulently conveyed or incumbered, to set aside the fraudulent conveyance or incumbrance. The general rule is that none but judgment creditors after issue and return of execution unsatisfied or after levy of execution on property can resort to bills of this character. On filing bills of complaint in either case, injunctions are granted against the debtor and all parties involved in the property, restraining the disposition of the property pending suit. Receivers may be appointed at any stage of the case pending suit, on proper showing, by petition or motion to the court. The practice is according to general rules in equity practice and jurisprudence.

Days of Grace. Not allowed. (See *Bills of Exchange—Promissory Notes*.)

Depositions may be taken conditionally to be read on the trial of any action pending in courts of record. When the witness is or is about to go or reside more than fifty miles from the place of trial, or beyond the jurisdiction of the court; or when the witness is sick, aged, or infirm, or where there is reasonable cause for apprehension that his testimony cannot be had at the trial of the cause, or where it is needed for use on hearing of motions, petitions, proceedings for injunctions or upon any other proceeding prior to final hearing of the case; also where it is desired to perpetuate testimony on suits to be begun. Such deposition may be taken before any judge of any court, foreign or domestic, or before any commissioner of a circuit court of the State or United States, or any consul, consular officer, justice of the peace, officer or notary public authorized by law to administer oaths. Notary must affix to his certificate date his commission expires. Reasonable notice must first be given in writing to the opposite party or his attorney of record, stating names of witnesses, time and place of taking, and name of the officer before whom to be taken. Any person may be compelled to appear and depose by the order and process of any court and to produce books and papers in the same manner as witnesses may be compelled to appear and testify in any court; 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.

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 descendants; 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 real estate for life. Personal estate one-half to the widow, one-half 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. Circuit 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 minor 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. Widows of every deceased person shall be entitled to dower, or the use during her natural life of one third part of all the lands her husband was seized of as an estate of inheritance at any time during the marriage 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, unless she is lawfully barred thereof: by joining in the conveyance and acknowledging same or by deed executed by her alone to one who theretofore acquired and then holds the husband's title—the intent to bar dower to be expressed in such conveyance; by a jointure settled on her before marriage, if same consists of freehold estate in lands for her life at least to take effect in possession or profit immediately on decease of husband. 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.

Evidence. The rules of evidence are governed by the common law, modified by statute and the practice of the courts. (*See Depositions and Testimony.*)

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. Personality 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.

Fraud. (*See Contracts, Sales, Attachment, and Conveyances.*)

Garnishments. Process may be served from any court of the State in which original suit is commenced to recover on contract, express or implied, judgment or decree of any court of this State, upon filing affidavit of plaintiff or his agent at the time of or at any time after commencing the original suit, showing the facts of the garnishee having property or effects belonging to the principal defendant or that the garnishee is indebted to such defendant, etc. Property, equitable interest, etc., in the garnishee hands held by fraudulent transfer, and property of any kind subject to execution in the garnishee hands belonging to principal debtor or liable for his debts may be recovered in the garnishee suit. Exemptions—Indebtedness of garnishees for personal labor:—To householder having a family not more than thirty dollars and not less than eight dollars. To any other persons for such labor not more than fifteen dollars and not less than four dollars. Benefit funds payable by A. O. U. W. Property received and held under conveyances that are fraudulent as to creditors and the value thereof if disposed of by garnishee before or after garnishment may be recovered in the garnishment proceedings. In cases appealed from justice's court the garnishments are returned as auxiliary to Appellate Court and thereafter conducted in that court the same as in original court. Garnishees may have garnishment discontinued on filing bond to pay any judgment recovered in the suit. All corporations of whatever nature, whether foreign, domestic, municipal, or otherwise, except counties may be proceeded against as garnishees in the same manner and with like effect as with individuals; before garnishment against any municipal corporation, judgment against the principal defendant must be recovered. Process in such case may be served on the president, cashier, secretary, treasurer, comptroller, or other principal officer of such corporation.

Guaranty Companies. Any company organized under the provisions of Chapter 163 for the incorporation of trust, deposit, and security companies under the laws of this State have power to guarantee or insure to grantee validity of titles in real estate transfers. Corporations to act as surety or guarantor must be authorized under the laws of the State wherein incorporated, and under its charter to guarantee the fidelity of persons holding places of public or private trust and to guarantee the performance of contracts other than insurance policies and to execute bonds and undertakings required in actions or proceedings or by law; must comply with the requirements of the laws of this State applicable to such companies.

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), 23d 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; Elections—National, State, County, and City Election days, and any day appointed by the governor; or by the president of the United States as a day of thanksgiving, or a day of fasting and prayer. In case any of said holidays, January 1st, February 22nd, May 30th, July 4th, and December 25th, shall fall on Sunday, then the Monday following shall be considered as the said holiday. (*See Bills of Exchange and Promissory Notes.*)

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. Any person who deserts his wife and minor children under fifteen years of age without providing necessary shelter, food, etc., and leaves the State of Michigan, shall upon conviction be deemed guilty of a felony and punished by imprisonment in the State prison for not more than three years nor less than one year: Provided that if before sentence he shall enter into bond to the people of the State of Michigan with sureties conditioned to furnish his wife and children necessaries, etc. (*See Married Women.*)

Injunctions. Writs of injunction are issued from the circuit courts of every county in the State, in all cases arising under the jurisdiction of such courts in chancery. Writs of injunction are usually prayed for in the bill of complaint filed as commencement of a suit in chancery. Temporary injunctions are usually granted on application to one of the judges of the circuit court, or on application to a circuit court commissioner who is authorized to perform the duties of injunction master within the county in which he shall reside. Perpetual injunctions are granted by the circuit courts on final hearing. No injunction shall issue to restrain the trial of any personal action at law until a bond with sufficient sureties shall be executed and filed. No order to stay proceedings at law in any personal action after verdict and before judgment shall be granted unless the money to the amount of the verdict shall be deposited with the court from which the injunction issues, or a bond for the payment thereof is given.

Insolvency. Banks insolvent or in contemplation of insolvency, all transfers of notes, bonds, bills of exchange, etc., assignments of mortgages and other real estate, securities, judgments, or decrees, and deposits of money, bills, or other valuable things, for its use or for the use of its stockholders or creditors, and all payments of money with a view to preventing distribution of assets as prescribed by the general banking law or with a view to the preference of one creditor over another, shall be held to be null and void. Insolvent estates of deceased persons, if the assets shall be sufficient for the payment of debts, the executor or administrator shall, after paying the necessary expense of administration, pay the debts of the estate in the following order: 1. The necessary funeral expenses. 2. The expense of the last sickness. 3. Debts having a preference by the laws of the State and United States. 4. Debts due to other creditors. If there shall not be enough to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all debts of the preceding class shall be fully paid. Insolvency laws of the State suspended by reason of the United States bankruptcy act.

Insurance Companies. Fire, marine, life, accident, health, plate glass, live stock, etc., may be organized under general laws enacted for the purpose, comprising mutual and co-operative associations. The regulation of insurance is under jurisdiction of a bureau of the State department, charged with the execution of the laws relative to fire, fire and marine, life, and other methods and practices of insurance. The chief officer is the commissioner of insurance, whose office is at Lansing, who grants a certificate of authority under the laws to all insurance companies doing business in this State; reports required by law must be made to him; has power to examine books and papers of such corporations, where he has reason to doubt their solvency.

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 and decrees bear interest at five per cent per annum but judgments rendered on any written instrument having a different rate which was a legal rate at the date of execution of said instrument interest shall be at such agreed rate.

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.

Jurisdiction. (*See Courts.*)

License required of attorneys and counselors to practice. Practicing attorneys of other States, Territories, or of any foreign country, may be admitted on motion to try cases in any of the courts of this State. Certificates of admission to practice in the court of last resort of any State in the Union, or in any United States circuit or district court, with recommendations of one of the judges of such court of last resort, the supreme court may admit such person to practice on motion made by some member of the bar. Every other person of full age, resident and citizen of the United States, of good moral character, on producing certificate of the board of examiners appointed by the governor that he possesses sufficient learning in the law and of moral character and ability to properly practice, may be

admitted to practice as an attorney and counselor at law and solicitor and counselor in chancery in all courts of record in this State, on motion in open court. No person denied admission on account of sex. Applicant must have studied law three years; he must submit to a written examination prepared by the board and to an oral examination, and be required to answer a minimum of 70 per cent of the questions. Itinerant merchants, jobbers, and traders, engaged in the selling of goods, wares, or merchandise, must first procure a license therefor from the township board, village or city counselor, as the case may be, on written application specifying manner of conducting business, etc. Amount to be paid for the license shall not be less than \$10 nor more than \$100. Hawkers and peddlers shall not be authorized to travel within this State for the purpose of selling goods, wares, or merchandise, or take orders for same, without obtaining a license from the State treasurer; same may be granted on payment of the duties. To travel on foot, \$15; to travel and carry goods with a single horse, \$40; by more than one horse, \$75; to travel by railroad, steamboat, or other public conveyance, \$100; to travel in any manner for the purpose of taking orders, \$50. License may be granted for any term less than one year upon payment of a ratable proportion. Licenses must be renewed annually. No license required of manufacturer, farmer, mechanic, or nurseryman in selling his work or production, by sample or otherwise. In the upper peninsula of Michigan the township board of any township may regulate and license hawkers, peddlers, and pawnbrokers, and the selling or peddling of goods, wares, merchandise, and refreshments, or any kind of property or things, by persons going about from place to place in the township for that purpose, or from any stand, vehicle, etc., in the streets or upon the wharves, docks, etc., in the township. Such license not to exceed \$100 in all for any term beyond the first Monday in May next thereafter, and shall not be transferable. Hunters not allowed to hunt for or kill deer in this State without obtaining a hunter's license from the clerk of the county; if a resident of the State he must pay 75 cents; if non-resident, \$25, for the deer hunting season of the year when issued. County clerk shall issue license in a form prepared by the Secretary of State. Necessary for all parties intending to be married to obtain marriage license from county clerk of the county in which either the man or woman resides, and deliver same to clergyman or magistrate who officiates before marriage. If both parties non-resident of State license must be obtained from clerk of county where marriage performed. Judge of Probate may issue license to any female in certain cases. License must be obtained from clerk of village, city, or township to advertise, represent, hold out, or conduct any sale of goods, wares, and merchandise of any insurance, bankrupt, mortgage, insolvent assignee's, executor's, administrator's, receiver's, or closing-out sale, or sale of goods, etc., damaged by fire, smoke, water, or otherwise.

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 with 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. 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.

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. 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 to 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.

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.

Mortgages. (See *Chattel Mortgages*.) Real estate mortgages must be in writing, and executed and acknowledged in the same manner as deeds, and subscribed to by two witnesses; may be recorded within the county wherein the land is situated, 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 mortgage. Mortgages are foreclosed: 1. By advertisement under power of sale, if any, contained in the mortgage. 2. By suit in the circuit court in chancery of the county wherein the property is situated. Mortgagor or parties claiming under him as purchasers or lienors may redeem, in case of foreclosure, by advertisement within one year from the date of sale, and, in case of foreclosure, by suit in chancery six months from the date of sale. Sales under decrees of foreclosure in chancery can not be ordered for an earlier date than six months after commencement of suit.

Notaries are appointed by the governor of the State in each county of the State; term, four years; required to give bond to the people, with sureties, in the sum of \$1,000, to faithfully discharge their duties. They have authority to take proof and acknowledgments of deeds, mortgages, and land contracts, to administer oaths and take affidavits in any matter or cause in any court of this State. To demand acceptances of foreign and inland bills of exchange and promissory notes, and to protest same for non-payment, and exercise such other powers as by the law of nations and commercial usage, or by laws of other States or countries, may be performed by notary public. They may take depositions in suits brought in this State. Affidavits taken in other States or Territories may be made before any notary public having official seal authorized by the laws of such State to administer oaths therein. Signatures of such notaries if not with seal of office shall be certified by the clerk of any court of record of the county where taken under the seal of said court. Fees for drawing a copy of protest of promissory notes or bills of exchange, or non-acceptance of such bill in cases where by law such protest is necessary, 50 cents; for every protest, 25 cents; for drawing copy and certifying their notices of non-payment of note or acceptance of bill, 25 cents; for drawing any affidavit or other paper, or proceeding for which provision is not herein made, 20 cents per folio; for copying the same, 6 cents per folio; for taking acknowledgments of deeds, etc., and for other certificates authorized by law, same fees as allowed other officers for similar services.

Partnership, Limited and Special. 1. "Limited," for the transaction of any mercantile or manufacturing business within this State may be formed by two or more persons. One or more shall be called general partners, who are jointly and severally responsible as general partners now are by law, and one or more persons who contribute a specific amount of capital in cash or other property at cash value to the common stock, called special partners, who are not liable for the debts of the partnership beyond the amount so contributed. The general partners are authorized to transact business, to sign for the partnership and bind the partnership. All persons forming such partnership sign a certificate containing name of firm, nature of the business, names of all the partners, distinguishing the general and special, and their residence, amount of capital stock each special has contributed, and period of the partnership. Such certificate to be acknowledged same as deeds of conveyances of land, and be recorded in the county clerk's office of the county wherein is the place of business, and if in different counties, a transcript thereof shall be filed and recorded in the county clerk's office of every such county, and an affidavit must be made and filed by the general partners, showing the actual payment of the special capital. Publication must be made of the terms of the partnership at least six weeks, in two newspapers designated by the county clerk, and in the senatorial district where the business is carried on. If such publication is not made the partnership shall be deemed general. If the name of any special is used in the firm with his consent or privilege, or if such special make any contract respecting the business with any person except the general partners, he is treated as a general partner. Suits respecting such partnership shall be prosecuted by and against the general partners only, excepting in cases where the specials are chargeable as general partners.

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.

Probate Law. Judge of probate for each county grants probate of wills and administration of estates of deceased persons, who at the time of their decease were inhabitants or residents in the same county, and of all who died without the State leaving any estate within such county; and to appoint guardians of minors and others prescribed by law, and have other powers and jurisdiction as may be conferred by law. Such judge shall hold a probate court in his county at times and places established by law; shall be a court of record and have a seal; such judge shall keep a true record of each order, sentence and decree and of wills, with the probate thereof, and of letters testamentary and administration, and all things proper; shall furnish copies of files, records, and proceedings certified by him under the seal of such court; has jurisdiction of all matters relating to settlement of estates of deceased persons and of minors and others under guardianship and of trust estates created by will of deceased persons and trustees thereof.

Protest. (See *Bills of Exchange*.)

Records of courts to be in the English language. Clerks of the courts have the care and custody of all records, seals, books, and papers appertaining to their office. Records of townships, counties, and villages and cities are kept by the clerks thereof. The records of the State are kept by the secretary of State and the various departments thereof. The records of taxes assessed and levied in and for the respective counties are kept by the county treasurer of each county in the State. The record of conveyances of lands, including mortgages and land contracts, and all instruments relating to the title of lands, are kept by the register of deeds in and for their respective counties wherein the lands are situated. The auditor general of the State keeps record of all State and County taxes annually returned as delinquent. Certified copies of records, required by law to be filed by any public officer, or entered on record certified by such officer, shall be evidence in all courts same as the original.

Redemption. (See *Mortgages*.)

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 exclusive jurisdiction.

Service. Judicial process from the circuit courts and other courts of record usually made by the sheriffs of the respective counties, and process from the justices' courts by constables, service is made by delivering to the defendant personally a true copy of process, and exhibiting to him the original and seal thereon of the court before the return day. In suits commenced by declaration and entering rule to plead in the office of the clerk of the court, service of a copy of the declaration and notice of such rule indorsed thereon personally upon defendant. In such suits against corporations at law and in chancery process must be served upon some officer of the corporation, usually the president, and may be served as against foreign corporations upon the officer or agent of the corporation, or upon the conductor of any railroad train, master of any vessel, belong-

ing to or in the service of the corporation. The process of subpoena, the first process in chancery suits, may be served in any county of the State by the sheriff thereof, or by any person of lawful age deputed by the complainant to serve the same, by delivering a copy to the defendant personally and by showing him the original writ with seal, same as process at law. Process against unincorporated voluntary associations, clubs, or societies having a distinct name may be served upon any officer thereof.

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.

Testimony in courts, in trials at law, and in equity may be heard orally from the witness on the stand or from depositions. Such depositions may be taken under commission, or by stipulation, or by notice under the statute *de bene esse*, in any civil case in any court of record at law or in equity, or before any probate court or commissioner on claims appointed by such court; or before arbitrators, referees, or circuit court commissioner, or justice of the peace, or in any other civil proceeding, when the witness is out of the State or about to go out, or resides more than fifty miles from the place of trial, or beyond the jurisdiction of the court, or when the witness is sick, aged, or infirm, or reasonable apprehension that his testimony cannot be had at the trial, or where it is needed for use on hearing of motion, etc., and in all cases where affidavits are permitted to be used before the court. Also when desired to take conditionally and perpetuate in suits to be begun, or when it shall appear to the court that the purposes of justice will be aided thereby. Such deposition may be taken before any judge of any court of the United States, or of any State or of any foreign country, or before any commissioner of the circuit courts in Michigan, or of the United States, or of any State, or any commissioner from Michigan, or any consul or consular officer, justice of the peace, or notary public, authorized by the laws of this State or any other State, or of the United States, or by the laws of any foreign country to administer oaths, and any member of the State Legislature not being of counsel or attorney for either of the parties, not interested in the event of the cause. The official seal of the court or officer, or certificate of authority given under seal of any court of record shall be *prima facie* evidence of authority to act. Reasonable notice must be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record.

Transfer of Corporate Stock. Certificates of capital stock issued by the corporation regulated by the by-laws of the corporations, usually by power of attorney endorsed on the certificate authorizing the secretary to transfer the same to the transferee upon the stock books of the corporation, and the transfer must be in writing signed by the stockholder or by his authorized attorney of record. Transfers of the certificates of stock in writing, though not entered upon the books of the corporation, are valid and may be enforced as against the corporation and all persons, if made in good faith and for a valuable consideration, but subject to any liability of the stockholder to the corporation for debts or unpaid subscription.

Trust Companies. (See *Banks and Incorporated Trust, Deposit, and Security Companies.*)

Warehouse Receipts. Receipts given for property deposited with any warehouseman for storage shall contain the particulars and description of all the property, brand, or distinguishing marks, date of the reception, and the name and address of the owner. Such receipt shall be evidence in any action against said warehouseman and shall be negotiable and may be transferred by endorsement and delivery thereof, and said endorsement may be in blank or to the order of another and shall be deemed a warranty that the endorser has good title and lawful authority to sell the property, subject, however, to the lien of the warehouseman for freight and charges on the property. No property described in such receipt shall be delivered by said warehouseman except on the surrender and cancellation of said original receipt, and partial sale or release of the property may be made by the written assent of the holder of such receipt endorsed thereon. Receipts endorsed "non-negotiable" printed or stamped on the face shall be exempt from these provisions. No warehouseman shall issue any receipt unless the property shall have been actually received into store, nor issue any receipt as security for money loaned or for indebtedness or indemnity, unless such property is unincumbered by such warehouseman and is actually in store, and if encumbered by prior lien the extent and amount of lien is fully set forth and explained in the receipt. May issue duplicate if endorsed or stamped in ink across the face "duplicate." The property in the receipts shall not be removed without the return of such receipt.

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 obliteration 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 distribution, 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. JOHN B. and E. P. SANBORN,
Attorneys at Law, St. Paul.

(See Card in Attorneys' List.)

Acknowledgments. Deeds and mortgages must be signed, 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, except in cases where the executor or administrator makes and files his affidavit that there are no creditors, in which cases the time may be limited to three months (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. Statutes relating to assignments for benefit of creditors exist and are in force, except as against proceedings under the U. S. Bankruptcy Act. Practically they may be said to be superseded by that 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 at least 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 \$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. This report shall be in duplicate and be delivered to the cashier, who shall transmit one to the public examiner and duly record the other.

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 to at least 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 may be transferred by indorsement and such indorsement shall transfer to the endorsee the title to the property and all rights of the endorser in respect thereto, 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 of personal property which is not accompanied by 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, attested by two subscribing witnesses, acknowledged before an officer authorized to take acknowledgments, and filed in the office of the clerk or recorder of the town, city or village in which the mortgagor resided at the time of its execution, if a resident of the State. Duplicates of such mortgage, or copies certified by any officer with whom it has been properly filed, may be filed in other places wherein any of the property was situated when it was made.

The lien of a chattel mortgage so executed and filed does not continue as against creditors of the mortgagee and subsequent purchasers and mortgagees of the property in good faith, beyond the term of six years from the date of filing the same, unless the indebtedness secured thereby does not mature within that time, in which case it continues for two years after the maturity of such indebtedness.

Chattel mortgages given by a married man or woman on property exempt from execution must be executed by both husband and wife, if living.

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 three 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 \$1 nor more than \$100. 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 in some newspaper printed and published in the county where said corporation has its principal place of business, two successive days if in a daily, and two successive weeks if in a weekly newspaper, 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 formed 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 abolished except on sight drafts. (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. Personality 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 8 per cent per annum. Stay in justice's courts may be had in same manner, where judgment is under \$10, one month; \$10 to \$25, two months; \$25 to \$50, three months; over \$50, 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 fourth of an acre 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, aspan 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, one hundred 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 23d; 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 succeeding business day, and in case of non-payment shall be protested on such succeeding 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 foreclose mortgages, fifteen years; real actions, fifteen years. Revivor: Part payment or new promise in writing.

Married Women. All property acquired by a wife before or after marriage remains her separate estate, neither controlled by nor liable for the debts of her husband. Every married woman is bound by her contracts and responsible for her torts, and her property is liable for her debts and torts to the same extent as if unmarried. She may make any contract which she could make as unmarried, and is bound thereby, except that no conveyance or contract for the sale of her homestead, or any interest therein, is valid, unless her husband joins with her therein. 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 merchant; viz., notes, bills, drafts, etc. No promissory note, draft, check, acceptance, bill of exchange, or other evidence of indebtedness except sight drafts is entitled to days of grace, but the same is payable at the time fixed therein without grace. 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 succeeding such days, and in case of non-payment or non-fulfillment shall be noted and protested upon such succeeding day.

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 there 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 entitles plaintiff to judgment, unless defendant files affidavit denying correctness and particularizing items. The affidavit must be by the creditor or his agent, not by one styling himself bookkeeper merely, and must state that the account is correct and is due from the debtor. The same rule applies to 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 triable in the circuit court in which the defendant has been personally served with process thirty days before the return day. Mandamus, quo warranto, mechanics' liens, attachments, and replevin triable at return term on five days' notice.

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, distributors, 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. Practically superseded by bankrupt 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 watercraft 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. Banks must give notice to administrator or executor of deceased persons of deposits of money and papers held for the deceased. Establishment of branch banks after October 1, 1906, prohibited. Directors of every bank to hold at least three regular meetings each year and keep a complete record of all proceedings. Every bank with paid up capital of as much as \$100,000 may do business as trust company; may act as guardian, receiver, etc.; may execute bonds in legal proceedings and generally perform the duties of a trust company; may establish a special mutual loan department and issue stock therein; in such department interest on loans not to exceed 8 per cent per annum. Bank not permitted to allow the use of its name by others in making loans. Others prohibited from making loans and taking paper in name of bank.

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.

Business Sign. Persons engaged in trade or business as "agent" or with the addition of the word "company" and the like, must have a sign showing distinctly the principal partner or other person so engaged; otherwise all property acquired or used in such business is liable for the debts of the person conducting it.

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. Corporations for every lawful purpose and of every kind, except for the construction and operation of a railroad other than street railroads, and the carrying on of an insurance business, other than mutual insurance associations, may be created under the provisions of a general chapter.

Persons desiring to be incorporated must apply to the secretary of state for the blank form provided by law. Said application blank must be filled out and signed by each of the incorporators and acknowledged before an officer authorized to take acknowledgments. It must then be published three consecutive weeks in a newspaper published at the domicile of the proposed corporation. The application, with proof of publication thereof, must be forwarded to the secretary of state together with the fee for recording and certifying same. The secretary of state then refers the same to the attorney-general for his opinion as to the constitutionality and legality of the proposed corporation, after which it is referred to the governor for his approval or disapproval. The governor then returns it to the secretary of state with his action endorsed thereon. If he approve it, the secretary of state shall record it in his office and certify to the same, and transmit it to the applicants. The charter when granted shall also be recorded in the office of the clerk of the chancery court of the county in which the corporation shall do business. Within thirty days after the organization under such charter, the corporation must make report of the organization to the secretary of state on a form furnished by him for that purpose. If such report be not made within the time required the charter granted shall be null and void, and all persons doing business thereon shall be deemed and held to be partners in the business, and liable as such.

Corporations thus created possess the powers usual and incident to private corporations generally, but their existence is restricted to a period of not more than fifty years. Corporations created as above named may hold real and personal property necessary and proper for their purposes, not exceeding one million dollars, manufacturing companies and banks excepted, which may hold property to the amount not exceeding two million dollars.

Corporations are prohibited from having a secret trust in property to an amount greater than they may legally hold. Corporations violating these provisions forfeit their charter and also forfeit the excess of property over the limit. Corporations may, however, take a lien on property real or personal to a greater amount than they may hold as a security for a debt, if same shall be held for a longer period than ten years. Stockholders individually liable for the debts the corporation contracted during his ownership of the stock for the amount or balance that may remain due or unpaid for the stock subscribed for by him, and may be sued by any creditor of the corporation after the sale or transfer of the stock. Directors are liable for the willful mismanagement of corporations, or for allowing the capital fixed by law while debts exist and are unpaid. When corporations are dissolved, the property vests in the stockholders as tenants in common. Corporations existing under the laws of other States or of foreign countries may sue in this State by their corporate names, and are liable to be sued in the same way. They have the same rights in the State as non-resident individuals. The constitution provides that the legislature may at any time repeal or amend charters granted after November 1, 1890, provided rights of stockholders are not infringed.

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 and 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 collateral. 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.

Evidence. In the main common law rules apply. Parties and interested persons competent witnesses; except in case of claim against estate of decedent. Affidavit to open account entitles to judgment, unless defendant denies under oath specifying items. Warehouse receipts and bills of lading made conclusive evidence in favor of a *bona fide* holder that the property was received by the issuer. (See also *Accounts and Affidavits*.)

Executions in circuit court issue within twenty days after the adjournment of court unless otherwise ordered by the plaintiff, and in justices' 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. The following property is exempt from seizure under execution or attachment, to-wit:

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, including pictures, drawings, and paintings, not exceeding five hundred dollars in value; also the instruments of surgeons and dentists used in their profession, not exceeding two hundred and fifty dollars in value.
The arms and accoutrements of each person of the militia of the State.

All globes and maps used by the teachers of schools, academies, and colleges.

And the following property shall be exempt from garnishment or other legal process, to-wit:

The wages of every laborer or person working for wages, being the head of a family, to the amount of fifty dollars per month; but this paragraph shall not apply to a debt for board and lodging, or a judgment founded on a debt for board or lodging.

The proceeds of insurance on property, real and personal, exempt from execution or attachment, and the proceeds of sale of such property.

Amount of Life Insurance Exempt. The proceeds of a life insurance policy, to an amount not exceeding ten thousand dollars 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 Same Payable to Executor. The proceeds of a life insurance policy not exceeding three thousand dollars, 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, except premiums paid on the policy by anyone other than the insured and debts due for expenses of last illness and for burial; but if the life of the deceased be insured for the benefit of his heirs or legatees at the time of his death otherwise; and they shall collect the same, the sum collected shall be deducted from the three thousand dollars, and the excess of the latter only shall be exempt.

Homestead Exemption in Country. Every citizen of this State, male or female, being a householder, and having a family, shall be entitled to hold exempt from seizure or sale under execution or attachment, the land and buildings owned and occupied as a residence by him or her, but the quantity of land shall not exceed one hundred and sixty acres, nor the value thereof, inclusive of improvements, save as hereinafter provided, the sum of three thousand dollars.

Homestead Exemptions in Cities. Every citizen of this State, male or female, being a householder, and having a family residing in

any city, town, or village, shall be entitled to hold, exempt from seizure or sale under execution or attachment, the land and buildings owned and occupied as a residence by such person, not to exceed in value, save as hereinafter provided, three thousand dollars, and personal property, to be selected by him, not to exceed in value two hundred and fifty dollars, or the articles specified as exempt to the head of a family.

No property is exempt as against purchase money or for labor performed on it or material furnished therefor.

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.

Guaranty Companies. (See *Surety Companies*.)

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

Homestead owned and occupied by husband living with wife cannot be sold or encumbered unless the wife joins in the conveyance. The same is true as husband if wife owns homestead. (See *Exemptions*.)

Holidays are Jan. 1, Feb. 22, April 26, June 3, July 4, first Monday in September, fourth Thursday in November, and December 25.

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, Wills, and Homestead*.)

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. (See *Chattel Mortgages*.)

Insurance Companies. There is a commissioner of insurance. There is a department of insurance charged with the execution of all laws relative to insurance companies, and every chief officer of this department is the commissioner of insurance with extended powers to give full information to anyone making inquiry as to matters in this department. He is the agent of all foreign companies doing business in this State, and they may be sued by serving process on him. All insurance companies doing business in this State must make annual statements showing the business done in this State for the preceding twelve months; also the financial condition of the company. This must be sworn to by an officer or chief managing agent, and such statement must be published by a newspaper of this State. Blanks adapted for the annual statements are furnished the commissioner of insurance. Life insurance companies are taxed in the first year's gross premium and one-tenth of 1 per cent in succeeding premiums. Fire insurance companies tax 2 per cent on all premiums. In addition the following taxes are exacted annually: Life insurance companies, \$50.00; fire, marine, and accident, each \$200; plate glass and all others, \$100. Each insurance agent also pays a privilege license according to the population of the municipality in which he does business; but in no place more than \$30 per annum. Municipalities may also tax agents one-half the same amount. Agents engaged exclusively in writing life insurance tax \$10 for each county; but if he pays in three counties, he may write insurance in any part of the State. Incorporated insurance agencies must pay a privilege license of \$100. There are stringent provisions to prevent insurance in this State except by license companies and agents. Provisions exist against the formation of trusts and pools by insurance companies and other corporations.

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 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. Foreign judgments have no effect, except as mere claims or basis for suits, in this State. (See *Executions*.)

Jurisdiction. (See *Courts*.)

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*.)

Mines and Mining. No laws on the subject.

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*.)

Notaries. Appointed by governor, and all justices of the peace and clerks of circuit and chancery courts are *ex officio* notaries. Have power to administer oaths, take acknowledgments of deeds, etc., and to protest notes and bills. (See *Conveyances, and Notes and Bills*.)

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*.)

Records. (See *Conveyances and Mortgages*.)

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*.)

Service. (See *Actions and Attachments*.)

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.

Testimony. (See *Evidence*.)

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. Provision for organization of such companies or their doing business in this State with general powers—to administer all trusts, make bonds and the like. (See *Banks*.)

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

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MESSRS. GAGE, LADD & SMALL, Attorneys at Law, Kansas City. (See Card in Attorneys' List.)

Accounts. Accounts are assignable. The cause of action on a running account accrues at the date of the last item.

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.

Actions. There is in this State but one form of civil action, the practice being under a code. Suit is begun by the filing of a petition and the issue of a summons by the clerk of the court, which must be served at least fifteen days before the first day of the term to which it is returnable. Suit must be brought, when the defendant is a resident of the State, either in the county in which he resides or within which the plaintiff resides, and the defendant may be found; when there are several defendants residing in different counties, suit may be brought in any one of such counties; when all the defendants are non-residents of the State, suit may be brought in any county; actions for the possession of real estate or whereby the title thereto may be affected, must be brought in the county within which the real estate or some part thereof is situate. In divorce and attachment suits, and actions for enforcing a lien upon or the establishment of any right or demand to or against any real or personal property within the jurisdiction of the court, defendants, non-residents of the State, may be notified by the delivery to them outside the State, of a copy of the petition and summons, at least twenty days before the commencement of the term, or they may be brought in by notice published in a newspaper for four weeks, the last insertion to be at least fifteen days before the commencement of the term.

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 mortgage, 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 con-

dition 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 failing 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 Exchange and Promissory Notes. The General Assembly of this State, at its last session, codified the law of negotiable instruments by the passage of "An Act relating to the negotiable instruments, to revise and codify the law concerning the same, and to establish a law uniform with that of other States on the subject." The act is the same as that passed by many other States in accordance with the recommendation of the American Bar Association. It became effective in Missouri, June 16, 1905.

Bills of Lading and Warehouse Receipts. 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.

Contracts. All contracts which, at common law, were joint only, are joint and several. Suits may be brought against any one or more of those liable on joint obligations. All instruments of writing, whereby one promises to pay to another, or to his order, or unto bearer, any sum of money or property, import a consideration. The use of private seals upon all written contracts and other instruments of writing, is abolished. Contracts for the sale of goods, at a price of \$30 or more, must be in writing unless the buyer accept part of the goods or give something in earnest to bind the bargain or in part payment. A promise to answer for the debt, default or miscarriage of another, an agreement made in consideration of marriage, a contract for the sale of lands or any interest in them, or any lease thereof for a longer time than one year, an agreement that is not to be performed within one year from its making, must be in writing; no contract for the sale of lands made by an agent shall be binding on the principal unless the authority of the agent is in writing. All representations or assurances made concerning the character, conduct, credit, ability, trade or dealings of another, must be in writing.

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 }
County of } ss.

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. Any portion of the stock may be preferred, paying annual dividends, cumulative or non-cumulative, not exceeding eight per cent. 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, other than of mining and railroad corporations, 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 or decrease 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. Stock holders 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, boating 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.

Costs. In all civil actions the party prevailing is usually entitled to recover his costs against the other party. In some cases the question of costs is in the discretion of the court. Attorneys' fees are not taxable as costs except in certain special proceedings.

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 \$4,500; 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.

Days of Grace. Days of grace are not allowed.

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 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, or other descendants, 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, subject to the payment of the husband's debts. If the husband dies without any child or other descendants in being, his widow is entitled to one-half of the real and personal estate belonging to the husband at the time of his death, absolutely, subject to the payment of his debts; it is at her option to elect between this provision and her common law right of dower in her husband's real estate, but her election must be made within twelve months after the grant of letters of administration. When the husband dies leaving a child or children, or other descendants, the widow, if she has a child or children by such husband living, may, in lieu of her common law dower in his real estate, elect to take, absolutely, a share in the lands of which her husband died seized, equal to the share of a child of such husband, subject to the payment of her husband's debts. She must make her election within fifteen months after the grant of letters of administration. The statute contains adequate provisions for the recovery by the widow of her dower. If the wife dies, leaving a child or children, or other descendants, the widower is entitled to a share in the personal estate belonging to the wife at the time of her death, equal to the share of a child of the deceased wife; if she dies without any child or children, or other descendants in being, her widower is entitled to one-half of the real and personal estate belonging to the wife at the time of her death, absolutely. Both these provisions in his favor are subject to the payment of the wife's debts.

Executions. Unless motion for new trial is filed within four days after judgment, execution issues immediately. Real estate must be sold during a session of the court which rendered the judgment. Sales of real estate must be advertised for twenty days; of personal property for ten days. Execution sales are for cash. No execution is a lien upon personal property until actual seizure thereof. It may issue at any time within ten years from the rendition of the judgment. Deeds to the purchaser are made at once by the sheriff, no confirmation of sale being required.

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, or mixed, or debts and wages, not exceeding in value \$300, except 10 per cent of any debt, income, salary, or wages due such head of a family. 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. No wages or property of any kind is exempt from attachment or execution to enforce a decree for alimony.

Foreign Corporations. A foreign corporation doing business within this State, must file in the office of the secretary of state, a copy of its charter, accompanied by a statement verified by its principal officer or agent in Missouri, of the proportion of its capital stock which is represented by its property located, and its business transacted in Missouri, and upon such proportion of its capital stock must pay the same incorporating fees as those required of domestic corporations on their organization, and an additional fee of \$10.00 for the license. The secretary of state then issues a certificate that the corporation has complied with the law, and is authorized to do business in the State. No license shall be issued to a corporation of another State organized by citizens and residents of Missouri, to avoid the laws of this State. No corporation of another State shall be licensed to do banking business. Foreign corporations transacting business in this State must also have and maintain an office herein for the transaction of its business, where legal service may be obtained upon it. No foreign corporation shall be permitted to mortgage, pledge or incur its personal property in this State to the injury or exclusion of any creditor who may be a citizen or corporation of this State, and no mortgage by any foreign corporation, except railroad and telegraph companies, to secure a debt created in another State, shall take effect as against any citizen or corporation of this State until its liabilities due to resident citizens or corporations at the time of recording the mortgage, have been paid. A foreign corporation failing to comply with these provisions, may be fined \$1,000, and cannot maintain any suit in any of the courts of this State. These provisions do not apply to drummers or traveling salesmen soliciting business in this State for foreign corporations which are entirely non-resident. Every corporation formed in any country outside of the United States, before it shall be authorized to transact business in this State, must also have a public office herein for the transaction of its business, where legal service may be obtained upon it, and where books shall be kept to enable the corporation to comply with the provisions of law governing such corporations. Such books must show in detail its assets and liabilities, names and residence of its shareholders and officers, directors, and managers. Each of its officers, directors, trustees, and managers must select and name an agent who must reside in this State, where service may be had upon him. As to such foreign corporation, the circuit court having jurisdiction within the county or city where its office is located, shall have jurisdiction to compel its officers and managers to account for their control of the business, to enjoin any alienation of the property, and to appoint a receiver. None of these requirements apply to insurance companies.

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 for more than 10 per cent of any 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.

Guaranty Companies. Any trust company which shall make with the superintendent of an insurance company, a deposit of \$200,000, in cash, government, State, county, or municipal bonds, notes or bonds, or debentures secured by first mortgages or deeds of trust on unincumbered real estate in Missouri, or such other first-class securities as the superintendent may approve, shall be permitted to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depository of money in court without giving bond as such, and become sole guarantor or surety in or upon any bond required to be given under the laws of this State, as well as to insure the fidelity of persons holding places of public or private trust.

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 general city election day is a holiday and every Saturday after 12 o'clock noon is a half holiday.

Injunctions. Injunctions may be granted by the circuit court, or a judge thereof in vacation, or when the circuit court is not in session and the judge is not within the county, the application may be made to the probate court, or judge thereof, or to the county court or any two judges thereof, in vacation. The remedy exists in all cases where a cloud would be put upon the title to real estate being sold under an execution against a person, partnership or corporation having no interest in such real estate, subject to execution at the time of sale, or where any irreparable injury to real or personal property is threatened, and to prevent the doing of any legal wrong whatever, whenever, in the opinion of the court, an adequate remedy cannot be afforded by an action for damages. Preliminary injunction only issues upon the execution of a bond in such sum as the court or judge shall deem sufficient.

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 time 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.

Liens. Statutory provisions exist for mechanics' liens, liens for keeping horses and other animals, liens of inn and boarding-house keepers, liens of contractors, material-men, and laborers against railroads.

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 covenantor 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.

Mines and Mining. Corporations for carrying on any kind of mining are created under the general law for the organization of manufacturing and business corporations. There are stringent statutory provisions regarding the operation of mines, which look to the safety and health of miners; official inspections are provided for, and the relations between miners and their employers are regulated by numerous provisions.

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.

Partnerships—Limited. A limited partnership may be formed for the transaction of mercantile, agricultural, mechanical, mining, and manufacturing business, and the transportation of coal, wood, and lumber. It cannot be formed for the purpose of banking, brokerage, or insurance business. Such partnership may consist of one or more as general partners, with the responsibility of partners, and one or more as special partners; the latter, upon contributing a specified amount of cash as capital, are not personally liable, if the provisions of the act be complied with. Partners forming such a partnership must sign a written statement showing the name and place of residence of each partner, the name and style of the firm, who are general and who are special partners, the amount of cash contributed by each special partner, if any, and if not paid in, when it is to be paid in; the general nature of the business and where it is to be transacted; the duration of the partnership and the amount each special partner may annually withdraw for his individual use. The statement must be verified by the affidavit of one or more of the partners. The statement and affidavit must be acknowledged and recorded in the office of the recorder of deeds for the county where the business is to be transacted, and published at least once a week for four successive weeks in a newspaper printed in the place where the business is to be carried on. If any part of such statement be false, the special shall be liable as a general partner. The business shall be conducted under a firm name composed exclusively of the name or names of some or all of the general partners without the addition of the word "company" or any equivalent term. If the name of any special partner be used by the firm with his consent, or he make and contract or transact any business for the firm, as agent or otherwise, he shall be deemed a general partner. If any part of the capital advanced by a special partner be withdrawn by him, or he fail to contribute as agreed by him, he is liable as a general partner. In case of insolvency no special partner shall be paid as a creditor of the firm until the other creditors of the firm are satisfied. No dissolution of such partnership otherwise than by its terms shall take place unless the same be advertised in the manner prescribed for its formation. Special partners shall be liable as general partners unless the firm keep up, at its place of business, a plain and legible sign giving the style of the firm, with also the words "limited partners."

Powers of Attorney. An instrument of writing containing a power to do any act or business, other than the conveyance of real estate, as agent or attorney for another, when acknowledged in the same form as required for deeds, may be read in evidence without further proof of its execution.

Redemption. There is no redemption from sales of real or personal property under execution or decree of foreclosure.

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.

Revision. By constitutional provision, all the statute laws of a general nature must be revised, digested and promulgated once in ten years. The last revision was in 1899.

Taxes. State and county taxes are usually paid in November or December. If not paid, they are regarded as delinquent from the first day of the succeeding January. State and county taxes for each year are a lien upon the real estate from the first day of June of the preceding year. Delinquent State and county taxes are collected by suit. Municipal taxes are payable according to the provisions of the charters or general laws by which they may be governed. In some cases the payment of delinquent city taxes may be enforced by a sale of the property without suit; in others, suit must be brought before sale can be made.

Transfer of Corporation Stock. Stock in incorporated companies is deemed personal estate, and is transferable in the manner prescribed by the by-laws; no shares can be transferred until all previous calls thereon shall have been fully paid in.

Trust Companies. Trust companies with the usual powers may be organized by three or more persons. At least one-fourth of the authorized capital stock must be actually subscribed, and one-half of the subscribed capital paid up in cash. The authorized capital shall not exceed \$10,000,000, and the amount of subscribed capital must not be less than \$100,000. The directors must be not less than five, nor more than twenty-five in number, and a majority of them shall be citizens of this State. The board of directors, whenever required, shall furnish the secretary of State a detailed statement of the condition of the company.

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 W. E. CULLEN, Jr., Attorney 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. When a person, otherwise entitled to serve as administrator, is not a bona fide resident of the State and is either the husband, wife, child, parent, brother or sister of the deceased, such person may request the court or judge to appoint a resident of the State to serve as administrator, and such person may be appointed. 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 \$200 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 be attached or 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 rebate 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 relieving 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 ten days 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 make four reports during each year at call of State examiner, showing full abstract of general accounts of the bank, and its resources and liabilities, which shall be published in local newspaper; examiner may also call for special reports. Any bank officer making false statement shall be guilty of felony with punishment of one to ten years in State prison. 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. Any foreign corporation or joint stock company may establish a branch bank in this State by complying with State banking laws.

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 within sixty days after 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, and that the debt was neither made, nor renewed, nor extended to hinder, delay, or defraud the creditors, or subsequent incumbrancers of the mortgagor. The affidavit must be subscribed and sworn to by the mortgagee, or, in case of his absence from the city or township where such affidavit is executed, by the agent or attorney in fact of the said mortgagee. The original mortgage then continues in force for one year after the expiration of the term for which it was originally given. A like affidavit may be filed within sixty days after the expiration of said renewal period last aforesaid and the original mortgage continues in force and virtue for another year. Under the same conditions and limitations the mortgage may be renewed for each succeeding year until the debt is fully paid. 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 subscribed; 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 unenforceable; such corporations must file verified statements annually within twenty days from Dec. 31.

Endowment and Investment Corporations may be organized with capital stock of not less than \$100,000 nor more than \$5,000,000.

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, or one child 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, of 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 chil-

dren, 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 as to premises foreclosed.

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, of 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 upon a contract, account or promise not founded on an instrument in writing, actions to establish a will, actions upon judgments of a court not of record, five years; actions against a sheriff, coroner or constable in his official capacity, actions to recover damages for the death of one caused by the wrongful act or neglect of another, actions upon an obligation or liability not founded upon an instrument in writing, other than a contract, account or promise, 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 assess ment, 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; but an action to question any stated or settled account between bank and depositor must be commenced within five years, and to recover on forged check within three years after receiving such check marked "paid." 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. An act to establish a law uniform with the laws of other States relating to negotiable instruments was enacted by the State Legislature in 1903. It is similar to the New York Negotiable Instruments law and that in force in many of the other States.

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. (See *Notes and Bills of Exchange.*) Foreign bills appearing to be such on their face must be protested if dishonored by non-acceptance or non-payment. A bill not appearing on its face to be a foreign bill need not be protested. The protest must be annexed to the original bill or a copy and must be under the hand and seal of the notary making it. It must specify the time and place of presentment; fact that presentment was made and manner thereof; cause or reason of protest; the demand made and answer given, if any, or the fact that the drawee or acceptor could not be found. The protest may be made by a notary public or respectable resident of the place where the bill is dishonored, in presence of two or more credible witnesses. Protest must be made on day of dishonor unless excused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. Bill must be protested at place where it is dishonored.

Replevin. The plaintiff in an action to recover possession of personal property may reply 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 surties, 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 reply 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 1 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.

Revised by MONTGOMERY & HALL, Attorneys at Law, Omaha.

(See *Card in Attorneys' List.*)

Abstracts of Title. Abstractor must give bond of \$10,000. Abstract may be used as evidence in trials by furnishing copy to opposing party to allow three days' examination of records.

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 any officer authorized by the laws of the State, 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 consul 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. (See *Limitations, Service*.) 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. The summons is returnable the second Monday after the day of its date, except when issued to another county when party serving has option to have return on third or fourth Monday, answer or demurrer of defendant on third Monday, and reply or demurrer of plaintiff on fifth Monday after return day. Service by publication four successive weeks. Justice summons returnable not more than twelve days from its date, must be served not less than three days before time set for trial.

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. Personality 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.

Answer Day. (See *Actions*.)

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, filing a bond if stay of proceedings is desired. In equity cases twenty days are allowed in which to file such bonds and six months in which to perfect the appeal, and in law cases parties have six months.

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.

Arrests. Arrest and imprisonment in civil actions for debt are abolished.

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 contracted 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*.

Attorneys at Law. Not accepted as sureties on bonds given in legal proceedings.

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 1,000 inhabitants or less capital shall be at least \$5,000; more than 1,000 and up to 1,500 inhabitants, \$10,000; over 1,500 and up to 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 discounts 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.

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

Bills of Lading. If any person shall execute and deliver, or shall cause or procure to be executed and delivered, any false or fictitious bill of lading, or if any person shall endorse, assign, transfer or attempt to endorse, assign, transfer or put off any false or fictitious bill of lading, the person offending shall be imprisoned in the penitentiary not to exceed one year, and not less than one year.

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.

Claims. (See *Accounts, Administration of Estates.*)

Commercial Travelers. (See *Licenses.*)

Code. (See *Revision.*)

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. These sales are valid as between the parties and as against judgment or attaching creditors and subsequent purchasers and mortgagees with notice.

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. It 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.

Contracts. Every contract for the purchase or sale of real estate or any estate, except a lease for a period not exceeding one year from the making thereof, must be in writing and subscribed by the parties. Every agreement by its terms not to be performed within one year from the making thereof, every special promise to answer for the debt, default or misdoings of another. Every agreement, promise, undertaking made upon consideration of marriage, except mutual promise to marry, and every special promise of an executor or administrator to answer damages out of his own estate, and every contract for the sale of goods and things in action, for the price of \$50, or more, shall be void unless note or memorandum be made in writing by the party to be charged thereby. If, however, when contract for sale of goods and chattels of the value of \$50 or more is made, and a part of the purchase price thereof is paid, or a part of the goods and chattels are delivered, to the buyer, no memorandum is necessary. (See *Statute of Fraud.*) An action upon a parol contract must be brought within four years and upon a written contract, excepting a contract for the recovery of real estate, within five years from the time the cause of action arose. (See *Limitations.*)

Conveyances. (See *Deeds, Bills of Sale, Mortgages, Conditional Sales.*)

Corporations. (See *Foreign Corporations.*) Any number of persons may associate and incorporate for the transaction of any lawful business, including the construction of canals, railways, bridges, and other works of internal improvements. Every corporation, as such, has power: 1. To have succession by its corporate name. 2. To sue and be sued, to complain and defend in courts of equity and law. 3. To make and use a common seal and alter the same at pleasure. 4. To hold personal estate and all such real estate as may be necessary for the legitimate business of the corporation. 5. To render all interest of the stockholders transferable. 6. To appoint such subordinate officers and agents as the business of the corporation shall require, and allow them a suitable compensation therefor. 7. To make by-laws not inconsistent with any existing law, for the management of its affairs. Every corporation previous to the commencement of any business, except its own organization, when the same is not formed by legislative enactment, must adopt articles of incorporation and have them filed in the office of the secretary of State; and domestic corporations must also file with the county clerk in the county where their headquarters are located, except mutual insurance companies, building and loan companies, loan and investment companies, and banking institutions, which shall be filed with the State auditor and State banking board. The articles of incorporation must fix the highest amount of indebtedness of liability to which the corporation shall, at any one time, be subject, which must in no case exceed two-thirds of the capital stock. (Exceptions made for insurance companies, deposits in banks, loan and trust companies.) Must incorporate within one year after organization, or power ceases. Notice must be published in some newspaper near the principal place of business, for four weeks. Such notice shall contain: 1. The name of the corporation. 2. The principal place of transacting its business. 3. General nature of the business to be transacted. 4. The amount of capital stock authorized, and the time and conditions on which it is to be paid in. 5. The time of commencement and termination of said corporation. 6. Highest amount of indebtedness or liability to which corporation is at any time to subject itself. 7. By what officers the affairs of the corporation are to be conducted. The notice required must be published within four months from the time of filing such articles. Two-thirds of its members may dissolve corporation unless otherwise adopted in articles of incorporation. Copy of by-laws of the corporation, with the names of all the officers appended thereto, must be posted in some conspicuous place at the place of doing business, subject to public inspection. Shall give notice annually, in some newspaper printed in the county or counties, or in State, if none in the county, of the amount of all existing debts of the corporation, signed by the president and a majority of the directors. If corporation shall fail to do so, stockholders of corporation shall be jointly and severally liable for all the debts of the corporation after exhausting its assets, and for all debts contracted before said notice is given, to the amount of the unpaid individual subscription of any stockholder to capital stock, and in addition thereto the amount of capital stock owned by such individual. For filing the articles of association, incorporation, or consolidation, domestic or foreign, \$10 must be paid to the secretary of State; and if the capital stock authorized by such articles exceeds the sum of \$100,000 an additional filing charge of 10 cents for each \$1,000 of stock authorized in excess of \$100,000; and he shall charge for said filing 10 cents for each one hundred words contained therein. That any corporation organized under the laws of any other State or Territory which has filed, or may hereafter file, with the secretary of State of this State, a true copy of its charter or articles of association, shall on filing with the secretary of State a certified copy of the resolutions adopted by its board of directors, accepting the provisions of this act, be and become a body corporate of this State.

Costs. (See *Security for Costs.*)

Courts. (See *Actions, Appeals.*) Juvenile courts are established for treatment and control of dependent, neglected and delinquent children. 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.

Creditors' Bill. The action in the nature of a creditors' bill is not superseded by the statutory remedy of proceedings in aid of execution. After obtaining judgment and return of an execution the court for further proceeding, after levy, may proceed in an action in equity by creditors' bill to set aside fraudulent conveyance. (See *Proceeding in Aid of Execution.*)

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 at 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, Married Women*) 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*.)

Distress for Rent. No authority for it.

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 or 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 *Curtsey*.) 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 Mortgages*) 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 on judgments 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; must on or before June 30, 1903, file with the attorney-general of the State an undertaking signed by officers, managers and directors that they will comply with the law, and thereafter within ten days after election or appointment, file similar undertaking; must on or before September 15, 1906, and in each year thereafter, file a statement with attorney-general of State, sworn to, showing capital stock, its market value, how paid, names of officers, directors and agents, amount paid in dividends and rate of percentage thereof, all stock held in other corporations and value of such stock, amount of its own stock held by other corporations and value thereof, and amount of trust stock held by other corporations.

Foreign Judgments. Judgments from courts of general jurisdiction of other States may be sued on in this State. Foreign judgments are barred by statute of limitations unless sued in this State within five years from the date of rendition. (See *Limitations*.)

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.

Guaranty Companies. That whenever any recognizance, stipulation, bond or undertaking, conditioned for the faithful performance of any duty, or for doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is by the laws of this State, required or permitted to be given with one surety or with two or more sureties, the execution of the same, or the guaranteeing of the performance of the condition thereof, shall be sufficient when executed or guaranteed solely by a corporation duly organized and existing under the laws of this state or of any State of the United States having paid-up capital of not less than \$250,000, and having power under its charter to guarantee or insure the fidelity of persons holding places of public and private trust, to become surety on bond and obligations of persons and corporations and become surety on any bond, recognizance, or other writing in the nature of a bond, in the same manner that natural persons may, subject to all rights and liabilities of such person; provided, that such corporation be approved as surety upon such recognizance, stipulation, bond or undertaking by the head department, court, judge, officer, board or body executive, legislative or judicial, required or authorized to approve or accept the same.

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, Divorce, Evidence, Exemptions, Married Women, Marriage*.)

Injunctions. Injunction provided by the Nebraska code is a command to refrain from particular acts. It may be the final judgment in an action, or it may be allowed as a provisional remedy; and when so allowed, it shall be by order. The writ of injunction is abolished. The injunction may be granted at the time of commencing an action, or at any time afterwards, before judgment, by the supreme court, or any judge thereof; the district court, or any judge thereof, or, in the absence from the county of said judges, by the probate judge thereof upon it appearing satisfactory to the court or judge by the affidavit of plaintiff

or his agent, that the plaintiff is entitled thereto. No injunction is granted until a bond is given, to be approved by the clerk of the court granting same, in amount to be fixed by the court or judge allowing the same, to secure the party enjoined for damages he may sustain if it be finally decided that the injunction ought not to have been granted. An injunction binds a party from the time he has notice thereof and a bond required by the applicant thereof is executed. A defendant may obtain an injunction upon an answer in the nature of a counter-claim.

Insolvents. (See *Assignments*.)

Installment Leases of personal property may be made with agreement to give title when a certain sum has been paid. Valid against creditors when filed in office of county clerk with affidavit of lessor or agent, giving full names of lessor or lessee, description of property leased and full interest of the owner.

Insurance Companies. Insurance statutes provide for the incorporation of insurance companies, secret societies, hail insurance companies, life insurance companies, fire insurance companies, plate glass insurance companies. Insurance companies organized outside of State must be possessed of at least \$100,000 capital stock actually paid in excess of all securities deposited in any other State or Territory for the special benefit of the insured therein. Any such company desiring to transact business as aforesaid shall appoint one attorney in each county in which agencies are established, resident at the county seat, and shall file with the auditor of the State a written instrument, duly signed and sealed, authorizing such attorney to acknowledge service of process for and in behalf of the company in this State. The valued policy law in force in this State provides that any policy of insurance written to insure any real estate in this State from loss by fire, tornado, or lightning, and the property insured shall be totally destroyed without criminal fault on the part of the insured or his assigns, the amount of insurance written in said policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The court upon rendering judgment against the insurance company upon any such payment of insurance shall allow the plaintiff a reasonable sum as attorney's fees to be taxed as part of the costs.

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 confession 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, Actions*.)

Leases. (See *Conditional Sales, Installment Leases*.) Verbal lease is good for one year. For longer time must be in writing signed by the parties.

License. Commercial travelers are not required to take out a license. There is a provision in the code requiring all peddlers to take out a license.

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 pre-empt in the proceeds of sale of property, if sold under foreclosure thereof.

Limitations. Actions brought to recover real property or foreclosure 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. Marriages are void between a white person and one of one-fourth or more negro blood; when either party has husband or wife living; when either party is insane or an idiot at time of marriage; between relatives as distant as first cousins. 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 prop-

erty, 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*.)

Minors are males under 21 and unmarried females under 18 years of age. Marriage of female after 16 years of age terminates her minority.

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 it is safer to record the assignment. If note secured by mortgage is negotiable assignment need not be recorded. 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.

Negotiable Instruments. (See *Notes*.)

Non-Residents. (See *Absent Parties, Aliens, Security for Costs*.)

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 payable at times fixed therein, without grace; are not negotiable unless drawn payable to a person, bearer, order, or assigns. If date of maturity fall on Sunday, or a holiday, are payable on the next business day; if it fall due on Saturday, must be presented for payment on next succeeding 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.

Pleadings. (See *Actions*.)

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.

Promissory Notes. (See *Notes*.)

Proof of Claims. (See *Decedents, Accounts*.) 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, except after rescission under contract of conditional 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.

Revenue. (See *Taxes*.)

Revision. General statutes, compiled in 1873, under authority of Legislature, entitled, "General Statutes of Nebraska," but not enacted by Legislature. Last revision of statutes, 1866, enacted by Legislature, and entitled, "Revised Statutes of Nebraska," and State admitted in 1867, with constitutional provision that existing laws, etc., remain in force. Nebraska has adopted a new constitution, which took effect November 1, 1875, continuing existing statutes in force, so far as not inconsistent with the constitution. The Legislature (Laws 1885, page 371,) made Compiled Statutes of 1881, and subsequent editions thereof, evidence of statutes. Since then there have been editions every two years. The latest session

laws are for year 1905. The Nebraska code was originally copied from the Ohio code, and the two are still very similar.

Sales. (See *Conditional Sales*.)

Security for Costs. (See *Attorneys at Law*.) 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. Guaranty and surety company bonds accepted.

Service. Service shall be by delivering a copy of summons to the defendant personally, or by leaving one at his usual place of residence, at any time before the return day. An acknowledgment on the back of the summons of the voluntary appearance of the defendant is equivalent to a service. Summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or last usual place of business of said corporation. When the defendant is an incorporated insurance company, and the action is brought in the county in which there is an agent thereof, the service may be made upon the chief officer of such agency. When the defendant is a foreign corporation, having a managing agent in this State, the service may be made upon such agent. When the defendant is a minor under the age of fourteen years, the service must be made upon him and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor should be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults. Before service can be made by publication, an affidavit must be filed that service of summons can not be made within this State on the defendant or defendants to be served by publication; the publications must be made four consecutive weeks in some newspaper printed in the county where the petition is filed, and if none, in some newspaper printed in the State, of general circulation in that county. It must contain a summary statement of the object and prayer of the petition, mention the court where it is filed, and notify the person or persons thus to be served when they are required to answer. In all cases where service may be made by publication, personal service of the summons may be made out of the State, by the sheriff or some person appointed by him for that purpose. In all cases where service of summons is made on a person without the State, proof of such service must be made by affidavit, stating the time and manner of service, and such service shall be made in the same manner as summonses are served on parties residing within the State.

Statute of Frauds. No estate or interest in land, other than lease for one year from the making thereof are valid unless in writing and subscribed by the party, and the following must be in writing: Agreements not to be performed within one year from the making thereof, 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.

Statute of Limitations. (See *Limitations*.)

Statutes. (See *Revision*.)

Stay. (See *Executions, Judgments, Mortgages*.)

Suits. (See *Actions*.)

Summons. (See *Actions, Attachments, Divorce, Service*.)

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. Premium on surety bond by State treasurer is paid by State, and surety bonds by executor, administrator, guardian, receiver, trustee, or other judiciary officers, have premiums paid by estate as part of expenses thereof.

Taxes. Taxes on real property are a lien thereon from October 1, of year of levy. Taxes on personal property are a lien thereon from November 1, of year of levy. Tax deed may issue after two years from date of sale certificate. Inheritance tax runs from 1 per cent upward. For all real estate taxes delinquent one year or more, the county may sell the property by action in court.

Testimony. (See *Evidence*.)

Transfer of Corporation Stock. There is no provision of statute regulating the manner in which shares of stock should be transferred, nor prohibiting an ordinary corporation from owning its own stock. Shares of stock may be transferred, therefore, in any manner provided for by the by-laws.

Trusts and Monopolies. All such, in restraint of trade, are illegal. Penalty is fine of \$5,000 or imprisonment for one year, or both. In addition, officers and agents are personally liable for all debts and obligations of company.

Trust Companies. There is no special legislation in reference to trust companies. They are organized under general law in reference to corporations, unless it is desired to do a banking business in connection therewith, in which event they must comply with the laws in reference to banks and banking. (See *Corporations, Banks and Banking*.)

Trust Deeds are seldom used and are treated as mortgages.

Warehouse Receipts. Any packer of pork or beef, or any manufacturer of distilled spirits or of linseed oil, having a warehouse for the storage of his own products; and any keeper of an elevator, warehouse, crib or tanks wherein he stores his own grain, flaxseed, or linseed oil, may issue receipts for his own meats, spirits, grain flaxseed, or linseed oil which he has so actually stored, in the usual form of warehouse receipts, which shall have the same force and effect as the receipts issued by the keeper of a public warehouse, to parties having property so stored therein, which receipts shall be negotiable by endorsement, and entitle the bona fide holder thereof advancing money on the credit of the same to a lien upon the property so stored and described therein, for the money so advanced, as to all subsequent purchasers and creditors of any person interested therein from the issue of such receipts and the advance of

such money. The execution and delivery by any person or officer of any corporation of a fictitious, false and fraudulent warehouse receipt is made a felony, as is likewise the endorsement, assignment, transfer or delivery of the same, knowing the same to be false fraudulent or fictitious.

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.

Witnesses. (See *Evidence*.)

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 ambassador, 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 negotiable 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.

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 course, 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 *Attachment*.)

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 female can be arrested in any action founded upon a contract or upon a conditional sale of clothing; nor can a voter on election day, or a defendant in a real action. The sheriff is exempt from arrest. (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 necessities 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*.)

SYNOPSIS OF THE LAWS OF NEW HAMPSHIRE

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by HENRY A. CUTTER, Attorney 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

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

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. Pledge 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, or 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, railroading or trading-stamp business. 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 \$300 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.

Costs. Costs follow the event of every action, unless otherwise directed by the court. Limited by the rule of court, to two terms, where less than \$100 is involved. No more costs than damages shall be recovered in any action of trespass to the person, or for malicious prosecution, or defamation of character, or where the damages recovered do not exceed \$33.33. Costs may be limited by the court on motion and good cause shown. The indorser of the writ is liable to the defendant, in an action where the defendant is successful. Foreign plaintiffs may be required to furnish bonds with local sureties to secure the indorser of the writ. Surety company can be accepted as surety. (See *Actions*.)

Courts. The superior court has original jurisdiction over all causes. The supreme court decides questions of law upon bills of exception, transferred from the superior court, and it holds its sessions every month, except July and August. 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 superior 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 superior court shall be held in each year at the times and places following: For the

county of Rockingham, at Exeter, on the third Tuesday of January and the third Tuesday of April; and at Portsmouth on the third Tuesday of October. For the county of Strafford, at Dover, on the second Tuesday of February, and the third Tuesday of September. For the county of Belknap, at Laconia, on the first Tuesday of March and the first Tuesday of November. For the county of Carroll, at Ossipee, on the second Tuesday of June, and the second Tuesday of December. For the county of Merrimack, at Concord, on the first Tuesday of April and the first Tuesday of October. For the county of Hillsborough, at Manchester, on the first Tuesday of January, and the first Tuesday of May, and at Nashua the third Tuesday of September. For the county of Cheshire, at Keene, on the first Tuesday of April and the first Tuesday of October. For the county of Sullivan, at Newport, on the second Tuesday of May and the second Tuesday of November. For the county of Coos, at Lancaster, on the third Tuesday of April; at Colebrook, on the first Tuesday of September, and at Berlin, on the first Tuesday of December. For the county of Grafton, at Plymouth, on the first Tuesday of May; at Haverhill, on the second Tuesday of September; at Lebanon, on the third Tuesday of November.

Creditors' Bills. Analogous to a bill for discovery; to be filed in a court in equity. It is necessary that the plaintiff shall have exhausted all his remedies at common law before he be entitled to file the bill, and relief in such case is granted when any property of the debtor, against whom execution has been issued and returned unsatisfied, is held so that it can not be reached.

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 piff. 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

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 inquired 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 the notice with the affidavit of service must be annexed to the deposition. The following is a form for the caption 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, Sireet, 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 piff. 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 and mother in equal shares, if both are living, and to the father or mother, if one of them is dead. 3. If there be no issue or father or mother, in equal shares 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' grandchildren. 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 she 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. In case the real estate (provided no issue survives) does not exceed \$1,500 in value, the survivor, husband or wife, takes the whole thereof. The same provision exists as to distribution of the personalty. As to any balance above \$1,500, the distribution is made according to the other provisions of the law, as above set forth. 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.

Evidence. Persons are not excluded from testifying because of interest, except where the party is an executor, administrator, or guardian of insane, and the subject of the testimony occurred during the life of the deceased, or prior to the ward's insanity, unless the executor, administrator, or guardian of the insane person elects to testify; or, when it is clearly shown to the court that injustice may be done by the exclusion of the testimony of such person. Husband and wife are competent witnesses for or against each other, except as to matters, which in the opinion of the court, might lead to the violation of marital confidence. In criminal proceedings, respondent may testify in his own behalf, if he elects, but not otherwise. Conviction of an infamous crime does not bar the party from giving evidence but bears upon his credibility. The rules of common law govern generally the admissibility of evidence.

Executions may be taken twenty-four hours after judgment, and are returnable before justice's and police courts in sixty days; before superior 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.

Foreign Corporations. Foreign corporations stand before the court, and in the eye of the law as local corporations. They can sue and be sued, when jurisdiction can be obtained. (See *Corporations*.)

Foreign Judgments. Foreign judgments of an inferior tribunal of another State, which does not admit of authentication under the laws of the United States is here, as at common law, *prima facie* evidence only, and not conclusive, and such judgments are not recognized in judicial proceedings unless rendered after personal service on the defendant, or after his appearance in the action. (See *Judgments*.)

Fraud. Aside from criminal frauds, the superior 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 necessities.

Guarantee Companies. Such companies can be incorporated only by legislative enactment. (See *Corporations*.) Foreign guarantee companies must be licensed by the insurance commissioners before doing business in the State.

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, Aliens, Descent of Property, Dower, Divorce, Married Women, and Wills*.)

Injunctions. The superior court has exclusive jurisdiction of the subject of injunctions. They are obtainable in a court in equity, and are made temporary when, in the opinion of the judge it is necessary, and may afterwards be made permanent, after notice and hearing. A decree of permanent injunction is decreed whenever damages would not be proper remuneration for the plaintiff, or to prevent recurring injuries or irreparable damage. Such decree is issued to abate nuisances; also in aid of divorce proceedings, and for other causes known to common law.

Insolvency. The State Insolvency Act is merely suspended by the National Act of Bankruptcy, the debtors therefore do not and can not make use of its provisions, although still remaining unrepealed upon the statute. (See *Assignments and Insolvency*.)

Insurance Companies. Insurance companies are incorporated only by act of the legislature. Foreign companies cannot do business in the State until licensed. No mutual company shall be licensed to do business in this State unless it shall possess \$200,000 cash assets, and not until it has filed with the insurance commissioner a written stipulation agreeing that legal service on the insurance agent shall have the same effect as if served personally on the company; and not until it shall file with the insurance commissioner a copy of its charter and by-laws, and statement under oath of the president and secretary, showing the financial standing of the company, in accordance with blanks furnished. And thereupon the commissioner shall grant a license to such company to do insurance business within the State, if he is satisfied that the company has the requisite capital and assets. Such license may be revoked, at any time by the commissioner, for legal cause. The agents of such insurance companies shall be residents of the State, and shall obtain license to transact business for the company. Such license shall continue in force until the first day of April next following its issue. Foreign insurance companies doing business in this State shall on or before the first day of February in each year transmit to the commissioner a statement, under oath, of its president and secretary, of the premiums received during the year ending on the 31st day of the preceding December; also give its assets, liabilities, amount of capital stock actually paid in, amount of outstanding risks, and the business standing generally of the company, in accordance with blanks to be furnished by the commissioner. Every such insurance company shall pay to the commissioner the following fee: For filing charter, \$25; filing statement, with application for license, and for each annual statement, \$15; for renewal of license, \$5; for each service of legal process on him as attorney, \$2. (See *Corporations*.)

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 paid, 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 he 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.

Jurisdiction. (See *Courts*.)

License. A license law with local option, for sale of liquors, passed at the January session, 1903. Adopted by all the cities and many of the large towns in the State. Foreign insurance companies must obtain license to do business; (See *Insurance Companies*.) hawkers and peddlers must also obtain license; dogs must be licensed; junk dealers; dealers in petroleum; sellers of milk; dentists; vendors of lightning rods; manufacturers of fertilizers; sale of drugs; foreign surety companies; non-residents to hunt; operators of power-boats and of automobiles.

Liens. Besides the common law lien the legislature has provided for a lien upon all the effects and baggage of a boarder brought to a boarding house until all proper charges for the fare and board of such boarders are paid; also lien for the pasture of horses, cattle, sheep, or other domestic animals. A person who may have performed labor or furnished material toward building, repairing, fitting or furnishing a vessel shall have a lien thereon for the space of four days after completion. A person furnishing labor or material to the amount of fifteen dollars or more for the erection or repairing of a house or other building, shall have a lien upon such house or building and the land upon which it stands, for the space of ninety days, which lien is perfected by an attachment. A person who may have furnished a monument or tablet, or curbing, shall have a lien thereon for the space of two years. And a person having a lien on personal property, when no time is limited for the payment of the debt, may sell the same at auction, fourteen days' notice of the sale being required, if the value of the property exceeds \$100, and a sworn return of said sale shall be recorded in the office of the town clerk. (See *Attachments, Taxes, Judgments*.)

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. Action against administrators limited to two years.

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; (See *Descent of Property*.) 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 cannot 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 husband's rights, nor can they convey so as to deprive the husband of his right.

Mortgages. Real Estate. A conditional conveyance shall be in effect 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.

Notary Public. Notary publics are appointed by the governor and council for the term of five years. They have powers coincident with justices of the peace. Their special duty is to protest notes. (See *Protest*.)

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.

Partnership. Every partnership shall file a certificate with the clerk of the town where such firm has its business, of the names and residences of the persons composing the firm. If the partnership firm shall neglect for the space of ten days to file such certificate no suit commenced against said firm, nor any member thereof, upon any cause of action growing out of the affairs of the firm shall be abated, nor shall have any attachments made upon the writ be affected by reason of non-joinder of any member. In case of death of any member of the partnership, the surviving partners shall within one month, return to the court under oath, an inventory of the estate, together with all debts due to said partnership. The surviving partner may be required to give bond to the judge of probate, conditioned to account and pay to the administrator such share of the partnership property as of right belongs to his estate. Limited partner

ships may be formed by two or more persons for any purpose except banking or insurance. There may be general partners who are jointly and severally responsible, and other partners whose responsibility is limited. Such partners may sign a certificate setting forth their respective liability, which shall be recorded in the clerk's office of the town in which the partnership is situated. During the continuance of the partnership no special partner shall withdraw any part of the property by him paid into the company. Any change of partners, or in the nature of the business or capital, or in any other matter specified in the certificate, shall change the special partnership to a general partnership and render all responsible as partners. Suits against the partnership may be conducted by and against the general partnership as if there were no special partners. In case of insolvency no special partner shall be allowed to claim as a creditor any part of the capital contributed by him until the claims of the other creditors shall be satisfied.

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 \$300 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*.)

Redemption. The equity of redemption in case of real estate mortgage is limited to one year from the date of the taking possession of the property by the mortgagee. No redemption under a power of sale mortgage. (See *Taxes*.)

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.

Service. The service of a writ, or other legal process, is made by the sheriff, by giving to the defendant in hand, or leaving at his last known place of abode an attested copy of the writ or process. The service of a subpoena can be made by any party, by reading the same to the witness; a return on oath is made by the party who made such service. Service of writ can be made upon a foreign defendant by a copy of the writ, attested by a clerk of the court. Fourteen days' notice is required in case of the service of a writ; in case of a deposition, four days' notice is necessary, and one day's extra notice must be given for each twenty miles additional that the opposing party resides from the place of giving the deposition. No longer notice than twenty days is necessary in any case.

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.

Testimony. (See *Evidence*.)

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.

Trust Companies. Analogous to banks, and subject to all the supervision which is exercised by the bank commissioners, and to all laws which are applicable to banks. (See *Banks*.)

Warehouse Receipts. There has been no legislation on this subject. The common law obtains.

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.

Acknowledgments of deeds are made within the State before the chancellor or a justice of the supreme court, a master in chancery, attorney at law, 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, borough, or corporation, duly certified under the seal of such city, borough, or corporation, 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 attorney at law of this State, 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, at the time of taking such acknowledgment, to take acknowledgments and proofs of deeds or conveyances for lands, tenements, and hereditaments 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 actions, 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 are granted. In case there is no will, letters of administration are granted. 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 a court of record, notary public, commissioner of deeds.

Aliens. No restrictions as to holding property. Foreign corporations, other than municipal, may purchase, use, and convey real estate in New Jersey. (P. L. 1903, Chapter 22.)

Appeals. From justice's court to court of common pleas of county. From district court to supreme court on question of law or evidence. From common pleas or circuit court to supreme court. From circuit or supreme court to court of errors and appeals. Except in first two cases chiefly by writ of error. From orphans' court to prerogative court. From prerogative court or court of chancery to court of errors and appeals.

Arbitration may by the submission be made a rule of court, concluding the parties, by the award.

Arrests. In civil actions, upon contract, 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. No capias will issue except by order of court, judge, or court commissioner.

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 against wages or personal property of non-resident when said property is exempt by laws of the State where debtor resides, at the suit of a non-resident creditor. Garnishment can be effected only in attachment cases. 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*.) An action may be commenced by attachment upon proof to court, judge, or court commissioner: 1. That cause of action arose in this State, stating nature and particulars, and that the defendant absconds from his creditors or is not resident and that summons can not be served. (But no attachment upon rolling stock or property in transit, in custody, of a common carrier). 2. That cause of action survives against heirs of decedent, and that some of such are unknown and there is property of decedent in this State liable to answer the cause of action.

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 an Act entitled, "A General Act relating to negotiable instruments (being an

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.

Act to establish a law uniform with the laws of other States on that subject." The act is quite identical with that passed in New York, Massachusetts, Connecticut, Rhode Island, Pennsylvania, Maryland, Virginia, North Carolina, Tennessee, Florida, Wisconsin, North Dakota, Colorado, Utah, Oregon, and Washington.

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 pawnbrokers 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 \$50 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. (See *Married Women*.)

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, 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. Corporation may determine the manner of calling and conducting all meetings, and what number of shares shall constitute a quorum. (P. L. 1901, p. 260.) 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. Foreign corporations, other than municipal, may purchase, use, and convey real estate in New Jersey. Associations not for pecuniary profit may incorporate under special law providing for such incorporation. 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. A copy of the corporation act may be had free upon application to New Jersey Registration and Trust company, 525 Main street, East Orange, N. J.

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 \$500 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 pre-rogative 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, about to go out of the State, or absent

from 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. For first two causes, decree of nullity.

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 an execution has been returned unsatisfied, the court out of which it was 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. Court may make order forbidding debtor from receiving or transferring property where it is shown he has property or rights in action. Order may also be made against third person owing debtor or having his property in control, custody, or possession. Arrest on a capias can only be had in case of fraud or attempted removal or disposal of property with intent to defraud creditors. Creditor may proceed upon unsatisfied judgment at law by bill in chancery; court has power to compel discovery, examine debtor, and to preserve and make disposition of property.

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. 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.

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. No corporation can make defense of usury.

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. Judgments recovered before a justice of the peace may be docketed in common pleas, so as to be a lien upon lands. Decrees in chancery may be enrolled in supreme court; when so recorded, have effect of judgment recovered therein.

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. A married woman who is an executrix or trustee may convey lands of testator without husband joining. A married woman may execute a valid conveyance of life estate. (See *Dover*.)

Mortgages. Unless to secure purchase money, wife must join. A married woman cannot execute any mortgage without husband. Foreclosure is by action in equity. Chattel mortgages are absolutely void as against creditors and subsequent bona fide purchasers and mortgagees, unless the mortgage is acknowledged or proved according to law and record, or unless the mortgage is accompanied by immediate delivery and followed by continued change of possession of mortgaged property. Foreclosure of chattel mortgages is usually effected by seizure and sale, although may be foreclosed in equity. 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.

Negotiable Instruments. (See *Bills of Lading and Promissory 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*.)

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. In the same suit damages may be recovered. 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 and remain paramount liens, except as to taxes subsequently assessed, from and after December 20th following assessment. Taxes due and in arrear September 1st next after assessment may be collected by sale of land. Right of redemption extends two years from 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. Subject to attachment and levy of execution.

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 FELIX H. LESTER, Esq., Attorney 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 situated. 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, if there be no husband or wife surviving, to those who are entitled to distribution of the estate, or one or more of them, as the probate judge shall believe will best manage the estate; thirdly, to any creditor thirty days after the death; fourthly, 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. (See *Act of Congress, July 20, 1886*.)

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 first file with the justice a bond with one or more solvent sureties to the adverse party, to be proved by the justice, in a sum sufficient to pay such judgment and costs. For good cause shown the judge of district court will allow certiorari to issue within thirty days after the rendition of the judgment. Appeals from judgments of probate court are to the district court, and must be taken within ninety days from judgment or decision appealed from, 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 appellant 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.

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 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 garnished. 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.

Bills of Exchange. All bills of exchange shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner and shall have days of grace according to the custom of merchants. Damage for non-acceptance or non-payment by persons outside the United States 12 per cent upon the principal specified in the bill, with interest on the same from the time of the protest; if drawn upon a person at a place in any of the United States, or Territories thereof, 6 per cent with interest. (See *Bills and Notes*.)

Bills 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 mortgages, 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 mortgagor, his agent or attorney, filed with mortgagor, showing interest of mortgage and amount still due.

Claims Against Estates. Claims must be properly entitled in the name of the claimant against the executor or administrator of the estate, and must be filed within one year from the appointment of the executor or administrator or they will be barred. The probate judge hears and determines claims against the decedent's estate. All claims filed and not expressly admitted in writing by the executor or administrator shall be considered as denied. Claimants may appeal from the probate court to the district court, which appeal must be taken within six months from the decision of the probate court, and within eighteen months after the appointment of the executor or administrator. Claims have preference as follows: 1. Expenses of administration. 2. Expenses of funeral and last sickness. 3. Allowance for maintenance of widow and children. 4. Claims preferred by the express provision of the United States or territorial laws. 5. Taxes. 6. All other debts. 7. Legacies. A claim against an estate on account of matters occurring during the lifetime of the deceased cannot be allowed on the uncorroborated evidence of the claimant.

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 (1) clerk of the district court, (2) judge of probate court using probate seal, (3) notary public, (4) justice of the peace. If taken without the Territory and within the United States, the acknowledgment to be taken (1) before a clerk of some court of record having a seal, (2) a commissioner of deeds duly appointed under the laws of this Territory, (3) a notary having a seal. If acknowledged beyond the limit of the United States, it shall be done before any (1) minister, commissioner, or charge d' affaires of the United States resident and accredited in the country where the acknowledgment is made, (2) consul general, consul, vice-consul, deputy consul, consular agent of the United States, resident in the country where the acknowledgment is made, having a seal, (3) a notary public having 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 1901 all married persons can convey or encumber real estate as if single, except community property. No seal or scroll necessary to the validity of conveyances except by corporations.

Corporations. By act of congress, approved March 2, 1867, legislative assemblies of the several Territories were prohibited from granting charters of special 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; the amount of the capital stock with which it will commence business, which shall not be less than \$2,000, 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; the names and post office addresses of the incorporators and the number of shares subscribed by each, and shall also give the name of the agent in charge of the principal office upon whom process can be served. 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 if stock is paid up, 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 in which the principal place of its business shall be a copy of the laws under which they are chartered, and a certified copy of their charter, and also a certificate signed by the president and secretary of such company, duly acknowledged, designating the principal place where the business of said company shall be carried on, and an authorized agent or agents residing at said principal place of business upon whom process may be served. 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 plaintiffs, in the discretion of the court.

Courts. District courts hold two terms a year in all the counties, and have unlimited common law and chancery jurisdiction. There are probate courts with the usual powers, holding six terms a year. District courts are at all times in session for the transaction of all business except jury trials.

Creditors' Bills. (See *Assignments*.)

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-half to husband or wife and the balance one-fourth to husband or wife and 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, impotency, pregnancy, conviction of a felony. 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, except for necessities of life. 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 seven years, provided first execution is taken out within five years after rendition of judgment, 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. (See *Administration of Estates*.)

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 bed-clothing 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. Unmarried men have no exemptions. Any resident of the Territory owning no homestead may select other property, not exceeding \$500 in value, in lieu thereof.

Foreign Corporations. (See *Corporations.*)

Foreign Judgments. Action founded upon any judgment of any court of record of any other Territory or State of the United States, or of the federal courts may be brought within seven years from and after the rendition of such judgment, and not afterwards.

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.*)

Insurance Companies. Insurance companies, either foreign or domestic, are allowed to do business in this Territory by complying with the laws of such corporations and depositing with the territorial treasurer \$10,000 in cash, or in bonds of the Territory of New Mexico or some county or city thereof, of the par value of \$10,000 in territorial or county bonds or real estate; agents required to pay license of \$10 per annum and 2 per cent on the amount of their premiums; also to give bond in sum of \$500.

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. Money judgments of the district court for the counties of Santa Fe, San Miguel, Bernalillo, Socorro, and Dona Ana, are liens on real estate of the judgment debtor from the date of rendition, if within sixty days after rendition of such judgment a transcript of the docket of such judgment be filed in the office of the recorder of the county in which such real estate is situated. A like judgment of the district courts of all other counties of the Territory and of the supreme court of New Mexico becomes a lien upon the real estate of the judgment debtor from the date of the filing of a transcript of the docket of such judgment in the office of the recorder of the county in which the real estate is situated.

Jurisdiction. Justice courts have jurisdiction to the amount of \$100. District courts have unlimited original jurisdiction. Probate courts hold six terms annually, and have ordinary probate jurisdiction. District courts in certain counties also sit for the trial and hearing of causes arising under the constitution and laws of the United States. District courts and probate courts are courts of record.

Lienses. A license or occupation tax required on graduated scale.

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. Sub-contractors have sixty days in which to file liens. Landlords, innkeepers, and common carriers have the usual lien on property and baggage of tenants, guests, and shippers. (See *Judgments.*)

Limitations. Ten years' adverse possession of land under color of title, having paid taxes on the same for such period, bars all actions. Infants, *femme covert*, persons of unsound mind, imprisoned, or beyond the limits of the United States, excepted, and have one year after removal of disability in which to bring action. 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.

Married Women. (See *Dower.*) May sue and be sued as *femme sole*.

Mechanics' Liens. (See *Liens.*)

Mortgages of Personal Property. (See *Real Estate and 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 mortgagee of personal property has the right to the possession thereof. After condition broken the mortgagee or his assignee may, where the amount of the debt does not exceed \$300, 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 six public places in the precinct in which the property is to be sold, at least for four weeks preceding 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 separate estate without the consent or signature of his wife. (See *Conveyances.*)

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

Notaries. The governor appoints notaries for the different counties, who serve for four years. They may receive or take acknowledgment of all instruments of writing relating to commerce, transportation, and navigation, receive and authenticate acknowledgments of powers of attorney, make declarations and protests and certify the truth thereof under their official seal concerning all matters by them done by virtue of their office.

Partnerships, Limited. Limited partnerships may be formed by two or more persons for the transaction of any mercantile, mechanical, manufacturing, or other business, except banking or insurance. Such partnerships may be general or special.

Powers of Attorney. Same as Common Law.

Practice. The legislature of 1897 abolished the common law forms of procedure and adopted the code. The common law rules of decision govern.

Probate Law. (See *Claims Against Estates, Descent and Distribution, Executors and Administrators.*)

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. Fees for protest and certificate thereof \$2; 25 cents additional for each notice.

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 1½ 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. No cross replevin allowed.

Revision. We have no provision for the revision of statutes. Last compilation and revision 1897.

Service. (See *Summons.*)

Stay of Execution. (See *Executions.*)

Suits. (See *Actions.*)

Summons. In the district court the defendant is required to appear within twenty days after service of the summons, if served within any county within the district in which he is sued, otherwise within thirty days after service, unless copy of complaint is served with summons, when he is required to answer also within such period. Upon attachment a non-resident defendant's service may be had by publication, by publishing in any newspaper published within the county for four weeks, the last publication to be at least four weeks before the process is returnable. In the justice courts summons can be made returnable in not less than five or more than twenty days. In attachment cases in justice courts service may be had by posting notice for not less than twenty nor more than ninety days.

Surety Companies. Surety companies qualified under the Act of Congress, approved August 13, 1894, permitted to do business in this Territory. (See *Foreign Corporations.*)

Taxation. Taxes have the force and effect of a judgment against the person assessed and constitute a lien upon real and personal property. Taxes become delinquent, one-half the first day of December of the year for which the same was levied, and the other half the first of June following, and unless the same is paid on the second days of December and July respectively, one per cent penalty is added; and unless said taxes are paid on or before the first day of the following month four per cent additional is added. After sale certificates draw interest at the rate of 1½ per cent per month. Real estate sold for taxes may be redeemed within three years. Exemption to amount of \$300 allowed to head of family residing in Territory. Irrigation, reservoir, and railroad companies exempt under certain conditions for a term of 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 declaring that he thereby revokes the same, or by a subsequent valid will disposing of the same property. 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 & HESSEBERG, 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, or proofs of deeds to be recorded therein. 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; also Cuba, Porto Rico, and Philippines.

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 decedent; 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 employes, 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. No foreign corporation, other than a moneyed corporation, may do business in this State with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," or any other words or terms indicating, representing, or holding out such company to be a moneyed corporation, as a part of its name or corporate title.

This provision does not apply to corporations now authorized to do business in this State, provided they add to their corporate title the words "not a moneyed corporation." (Chap. 489, Laws of 1904.) Domestic corporations are similarly restricted. The general banking act, 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, county, town, or village 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 any incorporated city situated in one of the states of the United States which was admitted to statehood prior to January first, eighteen hundred and ninety-six, and which, since January first, eighteen hundred and sixty-one, has not repudiated or defaulted in the payment of any part of the principal or interest of any debt authorized by the legislature of any such state to be contracted, provided said city has a population, as shown by the federal census next preceding said investment, of not less than forty-five thousand inhabitants, and was incorporated as a city at least twenty-five years prior to the making of said investment, and has not, since January first, eighteen hundred and seventy-eight, defaulted for more than twenty days in the payment of any part either of principal or interest of any bond, note or other evidence of indebtedness, or effected any compromise of any kind with the holders thereof. But if, after such default on the part of any such state or city, the debt or security, in the payment of the principal or interest of which such default occurred, has been fully paid, refunded or compromised by the issue of new securities, then the date of the first failure to pay principal or interest, when due, upon such debt or security, shall be taken to be the date of such default, within the provisions of this subdivision, and subsequent failures to pay instalments of principal or interest upon such debt or security, prior to the refunding or final payment of the same, shall not be held to continue said default or to fix the time thereof, within the meaning of this subdivision, at a date later than the date of said first failure in payment. It at any time the indebtedness of any such city, together with the indebtedness of any district, or other municipal corporation or subdivision except a county, which is wholly or in part included within the bounds or limits of said city, less its water debt and sinking funds shall exceed seven per centum of the valuation of said city for purposes of taxation, its bonds and stocks shall thereafter, and until such indebtedness shall be reduced to seven per centum of the valuation for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks, but the superintendent of the banking department may, in his discretion, require any savings bank to sell such bonds or stock 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, to the extent of 60 per cent of the value thereof. 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. No investment in any bonds and mortgages 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, 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 following securities: (a) 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 or any other State or States connecting with and controlled and operated as a 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 companies, respectively; 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 corporation, respectively, have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness, and in addition thereto, regularly and punctually, to have paid in divi-

dends to its stockholders during each of said five years an amount at least equal to 4 per cent upon all its outstanding capital stock; 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-third of the total mortgage indebtedness of such railroad corporations, respectively, including all bonds issued or to be issued under any mortgage securing any bonds in which such investment shall be made. (b) 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 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., Morris & Essex R. R. Co., Central Railroad of New Jersey, United New Jersey Railroad & Canal Co., also in the mortgage bonds of railroad companies whose lines are leased or operated or controlled by any railroad company specified in this paragraph, if said bonds be guaranteed both as to principal and interest, by the railroad company to which said lines are leased, or by which they are operated or controlled. Provided, that at the time of making investment authorized by this paragraph the said railroad corporations issuing such bonds shall have earned and paid regular dividends of not less than 4 per cent 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 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 authorized for investment by this subdivision shall be secured by a mortgage, which is a first mortgage on either the whole or some part of the railroad and railroad property of the company issuing such bonds, or that such bonds shall be mortgage bonds of an issue to retire all prior mortgage debts of such railroad company; provided, further, that the mortgage which secures the bonds authorized by this subdivision is dated, executed and recorded prior to January 1, 1905. (c) The mortgage bonds of the Chicago, Milwaukee & St. Paul Ry. Co., and the Chicago, Rock Island & Pacific Ry. Co., so long as they shall continue to earn and pay at least 4 per cent dividends per annum on their outstanding capital stock, and provided their capital stock shall equal or exceed in amount one-third of the par value of all their bonded indebtedness, and further provided that all bonds of either of said companies hereby authorized for investment shall be secured by a mortgage which is a first mortgage on either the whole or some part of the railroad or railroad property actually in the possession of and operated by said company, or that such bonds shall be mortgage bonds of an issue to retire all prior debts of said railroad company; provided, further, that the mortgage which secures the bonds authorized by this subdivision is dated, executed and recorded prior to January 1, 1905. (d) 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; and in the mortgage bonds of the Buffalo Creek R. R. Co., of an issue to retire all prior mortgage debts of said railroad company, provided that the bonds authorized by this subdivision are secured by a mortgage dated, executed and recorded prior to January 1, 1905. (e) The mortgage bonds of any railroad corporation incorporated under the laws of any of the United States, which actually owns in fee not less than 500 miles of standard gauge railway, exclusive of sidings, within the United States, provided that at no time within five years next preceding the date of any such investment shall such railroad corporation have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness, and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years an amount at least equal to 4 per cent upon all its outstanding capital stock; and provided, further, that during said five years the gross earnings in each year from the operations of said company, including therein the gross earnings of all railroads leased and operated or controlled and operated by said company, and also including in said earnings the amount received directly or indirectly by said company from the sale of coal from mines owned or controlled by it, shall not have been less in amount than five times the amount necessary to pay the interest payable during that year upon its entire outstanding indebtedness, and the rentals for said year of all leased lines, and further provided that all bonds authorized for investment by this subdivision shall be secured by a mortgage which is at the time of making said investment, or was at the date of the execution of said mortgage (1), a first mortgage upon not less than 75 per cent of the railway owned in fee by the company issuing said bonds, exclusive of sidings, at the date of said mortgage, or (2) a refunding mortgage issued to retire all prior lien mortgage debts of said company outstanding at the time of said investment and covering at least 75 per cent of the railway owned in fee by said company at the date of said mortgage. But no one of the bonds so secured shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds, which, together with all outstanding prior debts of said company, after deducting therefrom, in case of a refunding mortgage, the bonds reserved under the provisions of said mortgage to retire private debts at maturity, shall exceed three times the outstanding capital stock of said company at the time of making said investment; and no mortgage is to be regarded as a refunding mortgage, under the provisions of this act, unless the bonds which it secures mature at a later date than any bond which it is given to refund, nor unless it covers a mileage at least 25 per cent greater than is covered by any one of the prior mortgages so to be refunded. (f) Any railway mortgage bonds which would be a legal investment under the provisions of subdivision "e" of this section, except for the fact that the corporation issuing said bonds actually owns in fee less than 500 miles of road, provided that during five years next preceding the date of any such investment the gross earnings in each year from the operations of said corporation, including the gross earnings of all lines leased and operated or controlled and operated by it, shall not have been less than \$10,000,000. (g) The mortgage bonds of a railroad corporation, described in the foregoing subdivisions "e" or "f", or the mortgage bond of a railroad owned by such corporation, assumed and guaranteed by it by endorsement of said bonds, provided said bonds are prior to and are to be refunded by a general mortgage of said corporation the bonds secured by which are made a legal investment under the provisions of said subdivisions "e" or "f", and provided, further, that said general mortgage covers all the real property upon which the mortgage securing said underlying bonds is a lien. (h) Any railway mortgage bonds which would be a legal investment under the provisions of subdivisions "e" or "g" of this section, except for the fact that the railroad corporation issuing said bonds actually owns in fee less than 500 miles of road, provided the payment of principal and interest of said bonds is guaranteed by endorsement thereon by, or provided said bonds have been assumed by a corporation whose first mortgage, or refunding mortgage bonds, are a legal investment under the provisions of subdivision "e" or "f" of this section. But no one of the bonds so guaranteed or assumed shall be a legal investment in case the

mortgage securing the same shall authorize a total issue of bonds, which, together with all the outstanding prior debts of the corporation making said guarantee or so assuming said bonds, including therein the authorized amount of all previously guaranteed or assumed bond issues, shall exceed three times the capital stock of said corporation at the time of making said investment. (i) The first mortgage bonds of a railroad, the entire capital stock of which, except shares necessary to qualify directors, is owned by, and which is operated by a railroad whose last issued refunding bonds are a legal investment under the provisions of subdivisions (a), (e), or (f) of this section, provided the payment of principal and interest of said bonds is guaranteed by endorsement thereon by the company so owning and operating said road, and further provided the mortgage securing said bonds does not authorize an issue of more than \$20,000 in bonds for each mile of road covered thereby. But no one of the bonds so guaranteed shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds, which, together with all the outstanding prior debts of the company making said guarantee, including therein the authorized amount of all previously guaranteed bond issues, shall exceed three times the capital stock of said company at the time of making said investment. Bonds which have been or shall become legal investments for savings banks under any of the provisions of this act shall not be rendered illegal as investments, though the property upon which they are secured has been or shall be conveyed to another corporation, and though the railroad corporation which issued or assumed said bond has been or shall be consolidated with another railroad corporation, if the consolidated or purchasing corporation shall assume the payment of said bonds and shall continue to pay regularly interest or dividend or both upon the securities issued against, in exchange for or to acquire the stock of the company consolidated or the property purchased or upon securities subsequently issued in exchange or substitution therefor, to an amount at least equal to four per centum per annum upon the capital stock outstanding at the time of such consolidation or purchase of said corporation which has issued or assumed said bonds. Not more than twenty-five per centum of the assets of any bank shall be loaned or invested in railroad bonds, and not more than ten per centum of the assets of any bank shall be invested in the bonds of any one railroad corporation described in paragraph a of this subdivision, and not more than five per centum of such assets in the bonds of any other railroad corporation. In determining the amount of the assets of any bank under the provisions of this subdivision its securities shall be estimated in the manner prescribed for determining the per centum of surplus by section one hundred and twenty four of this act. Street railroad corporations shall not be considered railroad corporations within the meaning of this subdivision.

(Amended by Chap. 591, Laws of 1906.)

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.

Prohibition. No bank, banking association, individual banker, firm, association, corporation, person, or persons, except authorized savings banks, may advertise or put forth a sign as a savings bank or in any way solicit or receive deposits as a savings bank. (Chap. 568 Laws of 1904.)

Lawful Money Reserve. Banks of discount and deposit, and trust companies 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 and trust companies in all other place, 10 per centum.

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.

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

Chattel Mortgages. (See *Mortgages.*)

Conveyances. (See *Deeds.*)

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.) "This prohibition shall also apply to any assignee of such foreign stock corporation, and to any person claiming under such assignee or such foreign stock corporation or under either of them." (Amended by Chap. 96, Laws of 1901. Foreign corporations may acquire on sale in foreclosure of a mortgage held by them or upon any judgment or decree for debts due them, 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 16, as amended by chapter 186, 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 \$300, 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 subpoena for such examination is guilty of contempt of court. Depositions may also be taken for use on a motion in any action or proceeding.

Dower. (See *Married Women*.)

Employer's Liability to Employee. The Legislature has extended to and regulated the liability of employers, to make compensation for personal injuries suffered by employes. Act also applies to railroad companies. (Chapter 600, Laws of 1902.) (Chapter 657, Laws of 1903.)

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, except where execution is issued on judgment for either work performed in the family as a domestic, or for the purchase price of one or more articles specially exempt. Amended by Chap. 116, Laws of 1901. 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. But where the judgment is recovered wholly for necessities sold, or work performed in a family as a domestic, or for services rendered for salary owing to an employee of the judgment debtor, his earnings, or income from trust funds where they exceed \$12 per week, may partially be collected and applied on judgment by order of the Court. (Chap. 175 of the Laws of 1905.)

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. Whenever property is purchased by aid of a statement relating to the purchaser's means or ability to pay, made in writing and signed, the purchaser upon failure to pay must produce within ten days, upon request, his books of account and permit creditors to examine them, and failure to do so is made presumptive evidence of the falsity of such statement, and the party so making the statement may be proceeded against criminally. (Chapter 553, Laws of 1905.)

Foreign Corporations. (See *Corporations*.)

Garnishment. (See *Attachment*.)

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. Where a contract by its terms requires the payment of money, or the performance of a condition on a public holiday, such payment may be made or condition performed, on the next business day succeeding such holiday, with the same force and effect as if made or performed in accordance with the terms of the contract. (Chap. 39, Laws of 1902.)

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

Insolvency. (See *Assignments and Insolvency*.)

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 women may confess judgment. (Chapter 38, Laws of 1897.)

Merchandise—Regulation of Sales. (See *Sales*.)

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. All mortgages on real estate from and after July 1, 1906, are taxable at the rate of five mills on each dollar of the amount of the principal debt, payable at the time of recording the mortgage. (Chapter 532 Laws, of 1906.)

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*.)

Probate Law. (See *Wills*.)

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

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 surrogate's 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 item

ized 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 on 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 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 regis-

tration, 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 acknowledgment resides, of the official position and signature of such official.

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. In the case of an action upon a bill, bond, promissory note, liquidated and settled account, if the summons be served and the complaint filed thirty days before a term of court, the action shall stand for trial at the first term after the expiration of the thirty days. 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.

Administration of Estates. Letters of administration are granted by the clerks of the superior court: 1. To the husband or widow. 2. To the next of kin in the order of their degree, when they are of different degrees; if of equal degree, to one or more of them at the discretion of the clerk. 3. To the most competent creditor who resides in the State and proves his debt on oath before the clerk of the superior court. 4. To any other person legally competent. A resident of another State may act if he is not an alien. 5. There may be in every county a public administrator, to be appointed by the clerk of the superior court, who may obtain letters of administration, if the party entitled does not apply in six months, or if the person entitled renounces. Where no one applies within six months, all persons are deemed to have renounced, and the clerk may now appoint any discreet person. After the celebrated Owens case the Legislature prescribed that the murder of a husband or wife by the other should act as forfeiture of all material rights. The legislative committee has changed murder so as to read felonious slaying, thereby making one guilty of manslaughter of a husband or wife lose all rights of administration, dower, courtesy, etc.

The following persons are incompetent to qualify as administrators, namely: A minor, an alien who is a non-resident of the State, a person who has been convicted of an infamous crime, or one who refuses or fails to give the bond required.

Administrators and executors who do not reside within the State must give justified bond with two or more sureties to be approved by the clerk, in double the value of the personal assets of the estate. Additional bond may be required by the clerk if deemed by him necessary for the protection of the estate. (See *Guarantee Companies*.)

The debts of a decedent shall be paid in the following order: 1. Debts which by law have a special lien on property to an amount not exceeding the value of said property. 2. Funeral expenses. 3. Taxes. 4. Debts due to the United States and to the State of North Carolina. 5. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the deceased at his death. 6. Wages due to any domestic servant, or mechanical or agricultural laborer, for a period not more than one year next preceding the death, and claims for medical services within twelve months preceding the decease. 7. All other debts and demands. Every debt must be paid pro rata in its class. The administrator has no right of retainer.

The personal representative of a deceased person, must, within twenty days after his qualification, advertise for claimants to exhibit their claims before him at or before a certain date, which must be within twelve months from the first publication of the notice. A creditor who neglects to present his claim within the prescribed time may yet recover of heirs; devisees, legatees or next of kin, if they shall have received property of the deceased.

There is no particular form established by law for the proof of claims against the estate of deceased persons. The claims may be proven before the clerk of any court of record within or without the State, or a commissioner of deeds without the State, or a justice of the peace or notary public within the State.

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 of the annual net income of the deceased for three years preceding his death.

Executors and administrators must file an inventory of the personal estate coming into their hands within three months after qualification. They must file annual accounts and a final account within two years in the office of the clerk of the superior court.

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 the judgments of the justices of the peace to the superior court, and from clerks of the superior courts to the superior court, and from the superior court to the supreme court.

The party, against whom judgment is rendered in any civil action in a justice court, may appeal to the superior court from the same, but no appeal shall prevent the issuing of an execution on such judgment or work a stay thereof, unless an undertaking to stay execution is given.

Where any party prays an appeal from a judgment rendered in a ju-

tice's court, and the adverse party is present in person, or by attorney, at the time of the trial, appellant shall not be compelled to give any written notice of appeal either to the justice or to the adverse party.

The appellant shall, within ten days after judgment, serve notice of appeal, stating the grounds upon which the appeal is founded. If the judgment is rendered on process not personally served, and the defendant did not appear and answer, he shall have fifteen days, after personal notice of the rendition of the judgment, to serve the notice of appeal. The cost of a transcript of appeal shall be taxed as a part of the supreme court costs, and in this manner a successful appellant will be reimbursed his expenses for the transcript of appeal.

The justice shall, within ten days after the service of the notice of appeal on him, make a return to the appellate court, and file with the clerk thereof the papers, proceedings and judgment in the case, with the notice of appeal served on him. He may be compelled to make such return by attachment.

Arbitration. There is no statute regulating arbitration. The agreement of the parties as expressed in the "submission" governs. Awards are construed liberally and will not be set aside because of a mistake of law unless it appears that it was the intention to decide according to law.

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 Inventory. 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. 4. Injury to the person caused by negligence 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 there-

after 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 attorney 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.

"Whenever a final judgment has been recovered against an attorney at law for property received or money collected for his client, the clerk of the court shall retain such cause on the trial docket until the next term of such court, beginning not less than ninety days after the rendition of such final judgment. If such judgment be not then satisfied, the judge presiding shall make an order which shall be entered on the records of the court for such attorney to show cause, at a time and place to be named in such order, why he should not be debarred and upon the return thereof may make an order debarring such attorney at law from practicing law in any of the courts, and he shall thereby be debarred from so practicing. When any such judgment shall be rendered in the court of a justice of the peace, and it is thereupon sought to debar an attorney at law under this section, the cause shall be docketed on the civil issue docket of the Superior Court, and written notice served on such attorney ninety days before section by the court."

Banks and Banking. Any number of persons, not less than three may associate to establish banks of discount and deposit, to be known as commercial banks, and also to establish offices of loan and deposit, to be known as savings banks, or to establish banks having departments for both classes of business. The aggregate capital shall be not less and \$25,000, except at a bank organized in a city or town not exceeding fifteen hundred inhabitants can have a capital stock of not less than \$5,000, and of five thousand inhabitants of not less than \$10,000. The records of incorporation shall be executed in triplicate and recorded in the office of the superior court clerk of the county in which the bank is located, in the office of the corporation commission and in the office of the secretary of state. The bank shall not commence business until the corporation commission shall have ascertained the amount of money paid in on account of capital, the name and residence of each of its directors, the amount of capital stock of which each is the owner in good faith, and whether the bank has complied with all the provisions of law. Whereupon a certificate to this effect from the corporation commission is issued to the bank. Upon its incorporation the bank may exercise all of such powers as are necessary to carry on the business of banking, discounting or negotiating usury notes, drafts, bills of exchange and other evidences of debt by receiving deposits, by buying and selling exchanges, by loaning money on personal security or real property. It may take and receive any interest at the legal rate upon its loans. It may purchase, hold and convey real estate, such as may be necessary for the convenient transaction of its business, which investment shall not exceed 25 per cent of its paid-in capital stock and permanent surplus, such as is mortgaged to it to secure loans, such as is conveyed to it in satisfactory deeds and such as it acquires by sale on any execution in its favor. At least 50 per cent of the capital stock must be paid in before it commences business, and the remainder must be paid in monthly installments of at least 10 per cent, the payment of each installment to be certified to the corporation commission. The delinquent stockholders may be sold out by the bank. The transfer of no stock shall be valid against the bank so long as the registered holder thereof is a director of the bank. The stockholders shall be individually responsible, and not one for another, for all contracts of the bank to the extent of the par value of their stock in addition to the amount invested in such shares. The term stockholder includes the equitable owner of the stock, which may be on the books in the name of another person. No person who transfers his stock in good faith before a default on the part of the bank shall be subject to any personal liability on account of his stock. Officers or agents embezzling or misapplying funds or credits of the bank, or who, without authority of the directors, issue any certificate of deposit, draw any order or bill for exchange, make any acceptance or sign any note, bond, draft, bill of exchange, mortgage, judgment or decree, or who make any false entry in any book, or statement in the bank or association with the intent in either case to defraud the bank or association, or any other company, or any individual person, or to deceive any officer of the bank or association, or any person who aids and abets in the doing of any of these things shall be guilty of a high misdemeanor and upon conviction shall be imprisoned in the penitentiary of the State for not less than two years nor more than fifteen years and likewise at the discretion of the court.

Each bank is required to keep a correct list of its stockholders, and once each year, or whenever called upon, to file the copy of the same with the corporation commission. Whenever any state or national bank is authorized to dissolve it may reorganize by executing articles of incorporation subject to the approval of the corporation commission. Every bank, association, firm or individual doing a banking business without being organized by a state charter to do so shall conform to the proof of this law before it shall be authorized to continue to do a banking business. But this does not apply to individuals and firms doing business as bankers in their own names and so published. Every bank, corporation or individual now or hereafter transacting business in this state shall be subject to the provisions of this act and be regulated by and be under the supervision of the corporation commission. This commission shall make rules and regulations for the banks and banking institutions. Every bank and person conducting a banking business shall make quarterly reports to the corporation commission, duly verified, and the same shall be put in some newspaper in the county in which the bank is situated. The commission may also call for special reports. The commission shall provide bank examiners who shall examine the condition of the bank at

least once a year. Such bank examiners shall have power to make a thorough examination of the books and papers and affairs of the bank, examine under oath the officers, agents, etc., of the bank to compel the attendance of witnesses. They shall make a full and detailed report of the condition of the bank to the commission. An examiner making a false report or accepting a bribe shall be guilty of a felony and on conviction thereof shall be imprisoned in the state penitentiary for not less than two years or more than ten years. The bank shall pay the expense of the examination, including an examination fee to the examiner of \$15 when the capital of the bank is \$25,000 or less, and a fee of \$25 when the capital stock is between \$25,000 or \$50,000, and of \$30 when the capital stock is over \$50,000. Every bank, etc., failing to comply with the provisions of the act shall be subject to the fine of \$50 for each day after the time named for any report or statement to be made. Any person who shall wilfully make or cause to make a false statement or false entry in any of the books, or shall accept false papers with intent to deceive the bank examiner, or shall state or publish any false statement of the amount of the assets or liabilities of the bank, shall be deemed guilty of a felony, and upon being convicted thereof shall be imprisoned in the penitentiary for not less than one nor more than ten years. Every bank shall at all times have on hand as a reserve in available funds an amount equal to at least 15 per cent of the aggregate amount of its deposits. Two-fifths of said 15 per cent shall be cash in the vaults of the bank. But in cities having a population of more than 25,000 said reserve shall be 20 per cent of the aggregate amount of the deposits. But savings banks shall have on hand at all times as a reserve in available funds an amount equal to at least 5 per cent of their deposits. When, however, the available funds shall fall below the amount hereto required such bank shall make no new loans or discounts otherwise than by discounting bills of exchange payable at sight. Nor shall such bank make any dividends of its profits until it has on hand the available funds required by this act.

Any bank examiner, when appointed by the corporation commission, and who has filed such bond as may be required by the commission, when ordered by said board, shall have authority to take possession of any bank doing business under the laws of this state and retain possession of said bank for a time sufficient to make a thorough examination into the affairs and financial condition of said bank, and in case it is found by said examiner, upon said examination, that said bank is insolvent or is conducting its business in an unsafe and unauthorized manner, or is jeopardizing the interests of its depositors, then such examiner, when authorized by the corporation commissioner, shall have full power and authority to hold and retain possession of all the money, rights, credits, assets and property of every description belonging to such bank, corporation, partnership, firm or individual whose property has been taken possession of by such examiner, until the corporation commission can receive and act on the report made by the examiner of said bank, and have a receiver appointed for the purpose of winding up and settling the affairs of said bank, banking institution or banker, according to law; provided, the commissioners in their judgment may grant such bank, corporation or individual thirty or sixty days in which to correct any errors or irregularities, and make good any deficiencies or losses shown in such reports or otherwise.

"Whenever a final judgment has been recovered against an attorney at law for property received or money collected for his client, the clerk of the court shall retain such cause on the trial docket until the next term of such court, beginning not less than ninety days after the rendition of such final judgment. If such judgment be not then satisfied the judge presiding shall make an order which shall be entered on the records of the court for such attorney to show cause, at a time and place to be named in such order, why he should not be debarred and upon the return thereof may make an order debarring such attorney at law from practicing law in any of the courts, and he shall thereby be debarred from so practicing. When any such judgment shall be rendered in the court of a justice of the peace, and it is thereupon sought to debar an attorney at law under this section, the cause shall be docketed on the civil issue docket of the supreme court, and written notice served on such attorney ninety days before action by the court."

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.

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 a 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. The Negotiable Instruments Law, which is the same as the New York Statute, except that days of grace are retained, was adopted in 1899, and is chapter 733 of the Laws of 1899. (See *Days of Grace*.)

Bills of Lading. A bill of lading is not a negotiable instrument in the same sense that a promissory note or bill of exchange is negotiable. It represents specific goods and not money. The acceptance of a bill of lading is evidence of assent to its terms. The right of stoppage of the goods in transit inheres in a consignor who is an unpaid vendor, and is exercisable on the insolvency of the vendee, but this right of stoppage may be defeated by a transfer of the bill to a bona fide endorsee for value.

Bills of Sale must be in writing. They need not be under seal. The retention of possession by the seller is a badge of fraud. It is not necessary to register a bill of sale unless it be conditional or by way of mortgage.

Bonds. A note under seal is negotiable in North Carolina. They cannot be executed in blank. They may be payable to bearer, but they must name an obligee or payee. They take effect only from their delivery. They need not be witnessed. While a seal imports consideration, the consideration may be disproved. A scroll is a sufficient seal to a bond.

Chattel Mortgages. Chattel mortgages are not valid against third parties until registered in the county where the mortgagor resides, or, in case the mortgagor does not reside in the state, then in the county where the chattels are situated, unless they consist of *closes in action*, in which latter case the mortgage must be recorded in the county where the mortgagee resides. Renewal of a chattel mortgage is not required to continue it in force until fully satisfied. Chattel mortgages may be foreclosed by suits in court or by sales if mortgages contain a power of sale. Conditional sales are placed upon the same footing as chattel mortgages as to registration. It is a misdemeanor for one to dispose of property covered by a chattel mortgage with intent to defeat the mortgagee's rights. If household or kitchen furniture is mortgaged, it is necessary to its validity that the wife of the mortgagor join in the execution of the mortgage and that her private examination be taken as in case of conveyance of real estate.

Claim and Delivery. In an action to recover the possession of personal property the plaintiff may, at the time of issuing summons, or at any time before answer, claim the immediate delivery of such property. He must file an affidavit showing: 1. That the plaintiff is the owner of the property claimed (particularly describing it) or is lawfully entitled to the possession thereof. 2. That the property is wrongfully detained by the defendant. 3. The alleged cause of the detention thereof. 4. That the property has not been taken for a tax, assessment or fine pursuant to statute, or seized under an execution or attachment against the property of the plaintiff, or, if so seized, that it is exempt by statute from such seizure. 5. The actual value of the property. The plaintiff must give an undertaking with sureties in double the value of the property, for its return to the defendant, if return thereof be adjudged, and for damages. The defendant may retain the property to abide the event of the action on giving bond to deliver the property to the plaintiff and pay damages, if it be so adjudged.

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.

Consignments. If any person to whom goods are consigned shall embezzle or fraudulently or knowingly and wilfully misapply or convert to his own use or make away with the same with intent to embezzle, or fraudulently or knowingly or wilfully misapply or convert to his own use, money, goods or other chattels, bank note, check or other order for the payment of money, etc., or any other valuable security, he shall be guilty of a felony and punishable as in cases of larceny, and may be arrested and held to bail in a civil action.

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*.)

Conveyances. (See *Deeds, Mortgages*.)

Corporations. May be formed under the general statute, either with or without personal liability, by filing and recording a plan of incorporation or articles of incorporation, duly signed, in the office of the secretary of State. Thereupon the secretary of State shall record them and send a copy of the same to the clerk of the superior court of the county where the office of the corporation is located, who shall record the same in his office. Charters of corporations formed under general laws may be amended by proceedings before the secretary of State with whom the plan of incorporation was filed, provided there be no change of the business incorporated. They may also be created by a special act of the legislature. Stockholders are not responsible unless it is expressly so provided in their articles of incorporation and charter. The deed of a corporation must be sealed with the seal of the corporation, and may be signed by the president or presiding member or trustee, and two other members of the corporation and attested by witnesses; or by the president or presiding member or trustee and attested by the secretary of the corporation. But any conveyance of its property, whether absolute or upon condition, in trust or by way of mortgage, executed by any corporation, shall be void and of no effect as to the creditors of said corporation existing prior to or at the time of the execution of the said deed, and as to the torts committed by such corporation, its agents or employees prior to the time of the execution of said deed, provided that the creditors or persons injured, or their representatives, and shall commence proceedings or actions to enforce their claims against said corporations within sixty days after the registration of said deed, as required by law. No conveyance of its property by way of mortgage or bonds or in any other way shall be effectual as against any claim for services or tort, whether liability is incurred before the execution of the instrument or afterwards.

Domestic corporations may hold, purchase and convey real and personal estate, without limit, in and out of the estate, and may take such property by devise or bequest. Any corporation created by any other state or foreign government may acquire by devise or otherwise, and may hold, mortgage, lease and convey real estate in this state, "for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise in the payment of debts," provided the foreign government under whose laws such corporation was created be not at war with the United States at the time of purchasing such real estate.

Any corporation may purchase, hold, assign, transfer, mortgage, pledge or otherwise dispose of the shares of capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

Every corporation "having property and doing business in this state," whether incorporated in this state or not, must have an officer or agent in this state upon whom process may be served. A failure to comply with this law warrants service upon the secretary of the corporation commission and subjects the corporation to a repeal of its charter and a revocation of its license to do business in this state.

The property of any corporation may be sold under execution. The franchise of any corporation authorized to receive fares or tolls, with all the rights and privileges thereof, so far as relates to the receiving of fares and tolls, may be taken on execution and sold under the rules regulating the sale of real estate.

In the sale of the franchise of any corporation, the person who shall satisfy the execution with all costs thereon, or who shall agree to take such franchise for the shortest period of time, and to receive during that time, all such fare and toll, as the said corporation would, by law be entitled to demand, shall be considered the highest bidder. (See *Foreign Corporations, Guarantee Companies, and Insurance Companies.*)

Expenses of Organization. There is a tax of twenty cents for each \$1,000 of the authorized capital stock, but in no case to be less than \$25 upon all corporations formed under the general statute to be paid to the State treasurer. The secretary of State is entitled to a fee of \$2.00 for issuing the letters patent, and for recording the articles of agreement; \$1.00 for the first three copy sheets, and ten cents for each copy sheet in excess thereof. If he issues a copy of the articles of agreement at the request of the incorporators, he is entitled to the same fees for copying as recording. The clerk of the superior court of the county where the corporation has its principal office is also entitled to fees for recording the articles in his office. His fees depend upon the length of the articles.

All corporations must appoint an agent, resident in this State for service of process, and in case of failure to do so, service may be made on the clerk of the corporation commission.

Foreign Corporations. Every foreign corporation before being permitted to do business in the State of North Carolina (railroad, banking, insurance, express and telegraph companies excepted) shall file in the office of the secretary of State a copy of its charter, or articles of agreement, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this State, the name of the agent in charge of such office, the character of the business which it transacts and the names and postoffice addresses of its officers and directors. And such corporation shall pay to the Secretary of State, for the use of the State, ten cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than ten dollars nor more than one hundred dollars. Every corporation failing to comply with the provisions of this section shall forfeit to the State five hundred dollars, to be recovered with costs in an action to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has been violated. Acts of 1903, page 1124.

Surety companies must exhibit to the insurance commissioner a full statement of their assets and liabilities and pay a license fee of \$100. They must keep a general agent in the State upon whom process can be served.

Building and loan associations are required to pay to the secretary of State an annual fee of from \$5 to \$100 proportioned to the paid in capital in the State. No person shall solicit business or act as the agent for such association before he has secured from the secretary of State a certificate that the association has been duly licensed. No additional county or corporation tax shall be exacted.

The copy of a charter granted by the legislature of another state certified under the act of Congress is sufficient proof. When the corporation is organized under the general law of another State, the general law must be duly proved as well as the articles of incorporation.

A foreign corporation may hold real and personal property in the same manner and to the same extent as a domestic corporation.

In case of action against a foreign corporation, a copy of the summons must be served upon the officer or agent of the company. If there be none such and such corporation has property within the State, such property may be attached and process may be served by publication, or it may be served by the process officer of the county and State where the officer of the corporation may be found. But a judgment affects only the property attached.

A foreign corporation is subject to taxation in North Carolina on all of its property within the State. (See *Insurance.*)

Every corporation shall list the property owned by it as an individual, and with the exception of insurance companies, every corporation shall, in addition to such property, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name of the location of the company or association.
2. The amount of the 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 valuation of all its property, real and personal.

The aggregate of the fifth item shall be deducted from the aggregate value of its shares of stock, as provided by the fourth item, and the remainder shall be listed as its capital stock. (See *Taxes.*)

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.

Courts. The supreme court is the appellate court of last resort. It has jurisdiction to try all issues and questions of fact arising in equity cases where the evidence is before it, and the issues have not been tried by a jury. It has original jurisdiction to hear claims against the State, but its judgment is merely recommendatory. It sits twice a year. The superior courts have exclusive original jurisdiction of all civil actions, whereof original jurisdiction is not given to some other court, and they

have appellate jurisdiction of all cases determined by a superior court clerk or a justice of the peace. They sit twice a year in every county, and in some of the counties oftener. Clerks of the superior court have jurisdiction of the probate of deeds, granting of letters testamentary and of administration, appointment and removal of guardians, apprenticing orphans, auditing of administration and guardian, receivers' and trustees' accounts, the appointment and removal of trustees, making orders in claim and delivery, arrest and bail, attachment, supplementary proceedings, partition of lands and sale of same for division, sale of land to make assets for payment of debts of a decedent, and other special proceedings. But when issues of law or of fact are raised by the pleadings, they must certify the same to the superior court for trial. Their offices are always open. Justices of the peace have original jurisdiction of all civil actions founded on contracts, when the sum demanded does not exceed \$200, and when the title to real estate does not come into the controversy. They also have jurisdiction concurrent with the superior courts of civil actions not founded on contract, wherein the value of property in controversy does not exceed \$50. Where there are two or more defendants living in different counties, a justice of the peace in any of the counties can issue his summons to all of the counties.

Creditors' Bills. Creditors' bills are instituted for different purposes. Every action in the probate court to recover a debt against the administrator is necessarily a creditors' bill. An administrator may be compelled to sell real estate for assets by a creditors' bill. A creditors' bill may be maintained to set aside a fraudulent deed of trust. When the plaintiff declares that he sues for himself and all other creditors who will come in and share the expense, it is a creditors' bill. Where an action is brought by one creditor on behalf of himself and all other creditors, every creditor has an inchoate interest in the suit, and is in an essential sense, a party to the action. If a creditor institutes an independent action to recover his demand, he may be enjoined and forced to seek his remedy in the creditors' bill then pending, and if he declines to do so, he is bound by the decree in such action. The practice of making one suit answer in the place of many is for the protection of the person administering the fund, and for the prompt settlement of the estate. Where several of such proceedings are pending in a creditors' bill, each creditor can dispute the claim of any other creditor.

In a general creditors' bill, such as are usually instituted for the winding up the insolvent estates of deceased persons, or the affairs of a corporation, or to enforce trusts or assignments for the benefit of creditors, or in other instances where there is a community of interest, or where the law devolves upon the court the duty of taking a fund into its custody and distributing it according to the respective interests of the parties, no priority can be acquired by one person by suing or making himself a party before others; but in a judgment creditors' bill, which is sometimes instituted for the purpose of subjecting equitable and other interests which could not be reached and sold under execution, and also for the purpose of removing obstructions to legal remedies, as by setting aside fraudulent conveyance and the like, the vigilant creditor may acquire a priority as he does when he pursues the analogous remedy of execution at law, and he may thus reap the reward of his diligence. Under the latter class of creditors' bills, it is not necessary that the creditor should first obtain a judgment and show that the legal remedy by execution was ineffectual, but both causes of action may be included in one suit.

Deeds. A scroll is a sufficient seal to a deed in North Carolina.

When real estate shall be conveyed to any person, the same shall be held and construed to be a conveyance in fee, whether the word "heirs" shall be used or not, unless such conveyance shall in plain and expressed words show or it shall be plainly intended by the conveyance or some part thereof, that the grantor meant to convey an estate of less dignity.

If the deed conveys husband's lands, it should contain a clause releasing dower by the wife and should be signed by her. (See *Acknowledgments and Probate of Deeds.*)

Depositions. Any party in a civil action or special proceeding may take the depositions of persons whose evidence he may desire to use, without any special order therefor, unless the witness shall be beyond the limits of the United States. Written notice of the time and place of taking a deposition, specifying the name of the witness, must be served by the party at whose instance it is taken, upon the adverse party or his attorney. The time for serving such notice shall be as follows: Three entire days when the party notified resides within ten miles of the place where the deposition is to be taken; in other cases, where the party notified resides in the State, one day more for each additional twenty miles, except where the deposition is to be taken within ten miles of a railway in running operation in the State, when one day only shall be given for every 100 miles of the railway to the place where the deposition is to be taken. Where a deposition is to be taken beyond the State, ten days' notice of the taking thereof shall be given, when the party whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases, where there are no railways running as above specified twenty days' notice shall be given. When objection is taken to the reading of any such deposition, upon the ground that there are no railways or connecting railways to and from the points specified in this section, or that the notice given had otherwise been actually insufficient, it shall devolve upon the party objecting to satisfy the court of the truth of his allegation.

Depositions shall be taken on commission, issuing from the court and under the seal thereof by one or more commissioners, who shall be of kin to neither party, and shall be appointed by the clerk. Depositions shall be subscribed and sealed up by the commissioners, and returned to the court, the clerk whereof shall open and pass upon the same, after having first given the parties or their counsel not less than one day's notice; and all such depositions, when passed upon and allowed by the clerk, without appeal, or by the judge upon appeal from the clerk's order, shall be deemed legal evidence, if the witness be competent. If the clerk is a party to the action the judge opens and passes upon the deposition.

Every deposition, taken and returned as above prescribed, may be read on the trial in the following cases and not otherwise: If the witness is dead, or has become insane since the taking of the deposition; or is a resident of a foreign country or of another State, and is not present at the trial; or is confined in prison out of the county; or is so old, sick, or infirm as to be unable to attend court; or is president of the United States or head of any department thereof, or a judge, district attorney or clerk of any United States court, and the trial shall take place during the term of such court; or is governor of a State, or the head of any department thereof, or the president of the university or the head of any incorporated college in the State; or is a justice of the supreme court, or a judge, presiding officer, clerk, or solicitor of any court of record, and the trial shall take place during the term of such court; or a member of Congress or of the State legislature and the trial shall take place during the session of such body; or if after being duly subpoenaed is out of the State at the time of trial, or is more than seventy-five miles by the usual mode of travel from the place where the court is sitting, without

the procurement or consent of the party offering his deposition. Depositions taken stenographically and afterward type-written are sometimes offered in evidence without objection, but it is safer to have them in writing. Depositions may be taken under the foregoing rules in actions pending in magistrates' courts, the clerk of the superior court of the county appointing the commissioner.

Descent and Distribution. When any person shall die seized of an inheritance, not having devised the same, it shall descend according to the following rules: 1. Real estate lineally descends to the issue of the person who died last seized, entitled or having an interest therein, but shall not lineally ascend, except as hereinafter stated. 2. Females shall inherit equally with males, and younger with older children; but children advanced in real or personal estate must account for advancement or be excluded from sharing. 3. The lineal descendants shall represent their ancestors, and stand in the same place as the person himself would have done had he been living. 4. On the failure of lineal descendants, and when the inheritance has been transmitted by descent or derived by gift, devise or settlement from an ancestor, the estate shall descend to the next collateral relations of the person last seized, who were of the blood of such ancestor. 5. On the failure of lineal descendants, and when the inheritance has not been so transmitted or devised, or when the blood of such ancestors is extinct, the estate passes to the next collateral relations of the person last seized. 6. Collateral relations of the half blood shall inherit equally with those of the whole blood, and the degrees shall be computed according to the rules of the common law. A person dying, without issue and leaving no brother or sister, or issue of such, the father, if living, shall inherit, and if not, the mother. 7. No inheritance shall descend to any person as heir of the person last seized, unless such person shall be in life at the death of the person last seized, or be born within ten lunar months thereafter. 8. When a person shall die leaving no heirs, the widow shall be deemed his heir. 9. There is no distinction between aliens and citizens; aliens' heirs will not prevent other heirs, being citizens, from inheriting. 10. Illegitimate children shall inherit from their mother. 11. Illegitimate children may inherit from each other. Legitimate children may inherit from them. When an illegitimate child shall die without issue, his mother shall inherit from him. 12. Every estate for the life of another not devised, shall be deemed an inheritance of the deceased owner. 13. Every person in whom a seizure is required, shall be deemed to have been seized, if he may have had any right, title or interest in the inheritance. *The personal estate of a deceased person, in case of intestacy, shall be distributed in the following manner:* 1. If not more than two children, one-third to the widow and all the residue equally among the children and such persons as legally represent such persons who may be dead. 2. If there are more than two children, the widow and all the children share alike. 3. If there be no child nor legal representative of a deceased child, then one-half of the estate to the widow and the residue equally to the next of kin to the intestate, who are of equal degree, and those who represent them. 4. If there be no widow, then equally among the children and the legal representatives of the deceased children. 5. If there be neither widow nor children nor any legal representatives of the children, then the next of kin of the intestate who are of equal degree and those who legally represent them. 6. But if after the death of the father, and in the lifetime of the mother, any of his children shall die intestate without wife or children, every brother or sister and the representatives of them shall have an equal share with the mother of the deceased child. 7. If there be no child or legal representative of a deceased child, nor any of the next of kin of the intestate, then the widow, if there be one, shall be entitled to all the personal estate of said intestate. 8. If an intestate leaves no issue, nor the representative of such, his father shall take in preference to brothers, sisters and mother. In case a married woman dies intestate, her personalty goes to her husband. 9. Every illegitimate child of the mother dying intestate, or the issue of such illegitimate child, deceased, shall be considered among her next of kin, and as such shall be entitled to a share of her personal estate as prescribed in this chapter. 10. Illegitimate children, born of the same mother, shall be considered legitimate as between themselves and their representatives, and their personal estate shall be distributed in the same manner as if they had been born in lawful wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall be distributed among his mother and all such persons as would be his next of kin if all such children had been born in lawful wedlock. 11. Children who shall have any estate by the settlement of the estate of the intestate, and shall be advanced by him or by her in his or her lifetime, shall account with each other for the same in the distribution of the estate in the manner as provided under *Descents* and shall also account for the same to the widow of the intestate in ascertaining her child's part of the estate. 12. Where any parent shall die intestate, who had in his or her lifetime given to, or put in the actual possession of, any of his or her children, any personal property of what nature or kind soever, such child shall cause to be given to the administrator or collector of the estate an inventory, on oath, setting forth therein the particulars by him or her received of the intestate in his or her lifetime. 13. In case any child who had, in the lifetime of the intestate, received a part of said estate, shall refuse to give such inventory, he shall be considered to have had and received his full share of the deceased's estate, and shall not be entitled to receive any further part or share.

Detinue. (See *Claim and Delivery*.)

Divorce. Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the injured party to the superior court, made as by law provided, in the following cases: First, if a husband shall commit fornication and adultery; second, if the wife shall commit adultery; third, if either party at the time of the marriage was and is still naturally impotent; fourth, if the wife at the time of marriage be pregnant, and the husband be ignorant of the fact of such pregnancy, and be not the father of the child with which the wife was pregnant at the time of the marriage: Provided, that in all actions for divorce upon the grounds above mentioned it shall be alleged and proven upon the trial that the complainant had been a bona fide resident of the State of North Carolina for five years next preceding the commencement of the action; and provided further, that after the jury may have found the issue or issues in favor of the plaintiff it shall be the duty of the judge presiding at the trial, to carefully inquire into the facts and circumstances of the particular case, and if he shall be of the opinion that the divorce for any cause should not be granted he may in the exercise of his discretion decline to grant the divorce and set aside the verdict: Provided, further, that this act shall not apply to cases where the abandonment and separation occurs after the first day of January, 1903. The superior courts may grant divorces from bed and board, on application of the party injured, made as provided by law in the following cases: First, if either party shall abandon his or her family; or second, shall maliciously turn the other out of doors; or third shall by cruel or barbarous treatment endanger the life of the other; or fourth, shall offer such indignities to the person of the other as to render his or her condition intolerable, and life burdensome; or fifth, shall become an habitual

drunkard. In cases of divorce from bed and board, alimony may be granted, not exceeding the third of the annual income.

Dower. The wife is entitled to one third in value of all the land of which her husband was seized during coverture, including the dwelling house in which her husband usually resided. Dower, and all other rights in a husband's estate, are forfeited by elopement with an adulterer, by abandonment without just cause, and by a divorce *a vinculo*, or divorce *a mensa et thoro* granted at the suit of the husband. A wife who murders her husband forfeits her right of dower. (See *Administration*.)

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.

Escheats. Lands revert to the State whenever there is a want of any individual competent to inherit. A legacy to a bastard, who dies intestate without children, escheats to the university. All the real estate, which has escheated or may escheat to the State, which has not been reduced into possession by the State or the president and directors of the literary fund shall be vested in the University of North Carolina. All sums of money or other estate of whatever kind, which shall remain in the hands of any executor, administrator or collector for five years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin or others entitled thereto, shall be paid by him to the University of North Carolina; and the University of North Carolina is authorized to collect such moneys or other estate and hold the same until a just claim therefor shall be preferred by persons entitled thereto; and if no such claim shall be preferred within ten years, then the same shall be held by it absolutely. Personal property of every kind, which shall not be claimed by the parties entitled thereto in five years shall be deemed derelict property, and shall be paid to the University of North Carolina.

Evidence. No one is excluded or excused from being a witness by reason of interest, nor are the parties or their husbands or their wives so excluded or excused, except that husband and wife are not competent to give evidence for or against each other in any criminal action or proceeding, except to prove the fact of marriage, nor in any action on account of criminal conversation, nor are they compellable to disclose any confidential communications made one to the other during their marriage. The copy of a deed or other instrument on the register's book, or a certified copy thereof, is primary evidence, and the production of the original is not necessary. Upon the trial of an action, or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person, from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own behalf or interest, or in behalf of the party succeeding his title or interest, against the executor, administrator, or survivor of a deceased person, or the committee of a lunatic, or a person deriving his title or interest from, through or under a deceased person or lunatic, by assignment or otherwise, concerning a personal transaction or communication between the witness and the deceased person or lunatic; except where the executor, administrator, survivor, committee or person so deriving title or interest is examined in his own behalf, or the testimony of the lunatic or deceased person is given in evidence concerning the same transaction or communication. A party to an action may be examined by the adverse party at any time before the trial, at the option of the party claiming it, before a judge or clerk of the court, on a previous notice to the party to be examined, and any other adverse party, of at least five days, unless for good cause shown the judge shall order otherwise. But the party to be examined shall not be compelled to attend in any county other than that of his residence, or where he may be served with a summons for his attendance. It shall not be necessary to prove by an attesting witness instrument to the validity of which the attestation is not essential requisite, and instruments may be now provided by admission or otherwise, although there may be an attesting witness to the execution. No execution shall be issued to any county unless and until the judgement has been there docketed. (See *Accounts and Claims—Proof of*.)

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 of the court beginning not less than forty days after the issuing 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. The allotted homestead shall be exempt from levy so long as owned and occupied by the homesteader or by any one for him, but when conveyed by him in the mode authorized by the constitution (article ten, section eight), the exemption thereof ceases as to liens attaching prior to the conveyance. The homestead right being indestructible, the homesteader who has conveyed his allotted homestead, can have another allotted, and as often as may be necessary: Provided, this act shall not have any retroactive effect. The law of partition has been changed so that lands held in common may be partitioned at the instance of a judgment creditor, in order that homestead may be allotted, and mineral interests and timber interests may be partitioned separate from the land interests.

Extradition. Any justice of the supreme court or any judge of the supreme court, or of any criminal court, or any justice of the peace, or any mayor of the city or chief magistrate of any incorporated town, on satisfactory information laid before him that any fugitive in the State has committed out of the State and within the United States any offense which, by the law of the State in which the offense was committed, is punishable, either capitally or by imprisonment for one year or upwards in any State prison, shall have full power and authority and is hereby required to issue a warrant for said fugitive and commit him to any jail within the State for the space of six months, unless sooner demanded by the public authorities of the State wherein the offense may have been committed, pursuant to the act of Congress in that case made and provided; if no demand be made within that time the said

fugitive shall be liberated, unless sufficient cause be shown to the contrary. Every magistrate committing any person under the foregoing provision shall keep a record of the proceedings and transmit a copy thereof to the governor, who shall immediately inform the governor of the state or territory in which the crime is alleged to have been committed, or the president of the United States, if it is alleged to have been committed within the District of Columbia, of the proceedings in such case. The governor may employ agents or offer a reward for the apprehension of fugitives charged with felony.

False Pretenses. If any person shall knowingly and designedly, by means of any forged or counterfeited paper in writing or in print or by any false token or other false pretense whatsoever, obtain from any person or corporation within the State any money, goods, property, or other things of value, or any bank note, check, or order for the payment of money, certificate of stock, public security, or any order, bill of exchange, bond, promissory note, or other obligation, either for the payment of money or for the delivery of specific articles, with intent to cheat or defraud any person or corporation on the same, such person shall be guilty of a misdemeanor for fraud and deceit, and imprisoned in the penitentiary not less than four months nor more than ten years, and fined in the discretion of the court. Any person who, with intent to defraud or cheat another shall designedly, by color or any false token or writing, or by any other false pretense, obtain the signature of any person or persons to any written instrument, the false making of which would be punishable as forgery, or obtain from any person or persons, any money, goods, wares, merchandise or other property or valuable thing whatsoever, shall be punishable by fine, not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the penitentiary for a term not less than one year nor more than five years, or both, at the discretion of the court.

If any person shall obtain any advance in money, provisions, goods and wares or merchandise of any description from any person or corporation, upon any written representation that the person making the same is the owner of any article of produce, or of other specific chattel or personal property, which said property or the proceeds of which, the said owner in said representation thereby agrees to apply to the discharge of the debt so created as aforesaid, and the said owner shall fail to apply said produce or other property, or the proceeds thereof, in accordance with said agreement, or shall dispose of same in any other manner than is so agreed upon by the parties to the transaction, the person so offending shall be guilty of a misdemeanor, whether he shall or shall not have been the owner of any such property at the time such representation was made.

Foreign Corporations.—(See *Corporations*.)

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.

Fraud. For avoiding and abolishing feigned, covinous and fraudulent gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which may be contrived and devised for fraud, to the purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions and debts, every gift, grant, alienation, bargain and conveyance of lands, tenements and hereditaments, goods and chattels, by writing or otherwise, and every bond, suit, judgment and execution, at any time had or made, to or for any intent or purpose last before declared and expressed, shall be deemed and taken (only as against that person, his heirs, executors, administrators and assigns, whose actions, debts, accounts, damages, penalties and forfeitures, by such covinous or fraudulent devices and practices aforesaid, are, or might be, in any wise disturbed, hindered or defrauded), to be utterly void and of no effect; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding. Every conveyance, charge, lease or incumbrance of any lands or hereditaments, goods and chattels, if the same be made with the actual intent in fact to defraud such person as hath purchased, or shall purchase, in fee simple, or for lives or years the same lands or hereditaments, goods and chattels, or to defraud such as shall purchase any rent or profit out of the same, shall be deemed utterly void against such person and others claiming under him who shall purchase for the full value thereof the same lands or hereditaments goods and chattels or rents or profits out of the same, without notice before and at the time of his purchase of the conveyance, charge, lease or incumbrance by him alleged to have been made with intent to defraud; and possession taken or held by or for the person claiming under such alleged fraudulent conveyance, charge, lease, or incumbrance, shall be always deemed and taken as notice in law of the same. No voluntary gift or settlement of property by one indebted shall be deemed or taken to be void in law as to the creditors of the donor or settler prior to such gift or settlement, by reason merely of such indebtedness. If property, at the time of making such gift or settlement fully sufficient and available for the satisfaction of his then creditors, be retained by such donor or settler at such time shall be held and taken, as well with respect to creditors prior as to creditors subsequent to such gift or settlement, to be evidence only from which an intent to delay hinder or defraud creditors may be inferred; and in any trial at law, as such, shall be submitted by the court to the jury, with such observations as may be right and proper.

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.

Fraudulent Conveyances. Conveyances of lands or goods made to delay, hinder or defeat creditors are void. Conveyances of lands, goods and chattels, if the same be made with the actual intent in fact to defraud such persons as hath purchased or shall purchase the same lands, goods and chattels shall be deemed void against such person, and others claiming under him, who shall purchase for the full value thereof the same goods, lands and chattels, without notice, before, and at the time of the purchase or the alleged fraudulent conveyance; the possession

taken or held by or for the person claiming under such alleged fraudulent conveyance shall be always deemed and taken as notice in the law of the same. Voluntary conveyances are not deemed fraudulent as to creditors merely because of indebtedness of the donor, if at the time of making such gift property fully sufficient and available for the satisfaction of his then creditors be retained by such donor. Bona fide conveyances upon good consideration are valid provided the grantee have no notice of the previous fraud; and the bona fide purchasers without notice under deeds made on illegal consideration are valid.

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. (See *Fraudulent Trading*.)

Fraudulent Trading. If any person or persons shall transact business as a trader or merchant, with the addition of the words "factor," "agent," "and company," or "and Co.," or shall conduct such business under any name or style other than his own, except in case of corporation, and fail to disclose the name of his principal or partner by a sign placed conspicuously at the place wherein such business is conducted, or if any married woman shall conduct such business through her husband or any other agent, or if any husband or agent of any married woman shall conduct such business for her without displaying the Christian name of such married woman, and the fact that she is a femme covert, by a sign placed conspicuously at the place wherein such business is conducted, then all the property, stock of goods and merchandise and choose in action purchased, used, and contracted in the course of such business, shall, as to creditors, be liable for the debts contracted in the course of such business, by the person in charge of same. Any married woman conducting as aforesaid, without complying with the provisions of the above, shall, for all purposes, be deemed and treated to all debts contracted in the course of such business as a free-trader as if she had in all respects complied with sections one thousand eight hundred and twenty-seven and one thousand eight hundred and twenty-eight, of the code of North Carolina: Provided, this act shall not apply to any person transacting business under license as an auctioneer, broker, or commission merchant. It shall be incumbent on such trader, merchant, or married woman to prove compliance with the above.

Garnishee Process. When the sheriff or other officers shall serve an attachment on any person supposed to be indebted to or to have any effects of the defendant in the attachment, he shall at the same time summon such person as a garnishee, in writing, to appear at the court to which the attachment shall be returnable, or if issued by a justice of the peace, at a place and time named in the notice, not exceeding twenty days from date of notice, to answer upon oath what he owes to the defendant, and what effects of the defendant he has in his hands, and had at the time of service of such attachment, and what effect or debts of the defendant there are in the hands of any other person, to his knowledge and belief; and when an attachment shall be served on any garnishee in manner aforesaid, it shall be lawful, upon appearance and examination, to enter up such judgment and award execution for the plaintiff against such garnishee, for all sums of money due to the defendant from him, and for all effects and estates of any kind belonging to the defendant, in his possession or custody, for the use of the plaintiff, or so much thereof as shall be sufficient to satisfy the plaintiff's judgment, and the same shall be delivered to the sheriff or officer serving the attachment. When any garnishee shall be summoned as aforesaid, and shall fail to appear and discover on oath as directed, the court, after solemnly calling the garnishee, shall issue a conditional judgment against him; and thereupon notice shall issue against him, returnable to the court having jurisdiction, to show cause why final judgment shall not be entered against him. If, upon due execution thereof, such garnishee shall fail to appear at the time and place named in the notice and discover on oath, in manner aforesaid, the court shall confirm said judgment, and award execution for the plaintiff's whole judgment and costs. If, upon the examination of the garnishee, it shall appear to the court that there is any of the defendant's estate in the hands of any person who has not been summoned, the court shall, upon motion of the plaintiff, grant a judicial attachment to be levied on every such person having any of the estate of the defendant in his possession, who shall appear and answer, and shall be liable as other garnishees. When any garnishee denies that he owes to or has in his possession any property of the defendant, and the plaintiff shall, on oath, suggest to the court the contrary; or when a garnishee shall make such a statement of facts that the court cannot proceed to give a judgment thereon; then the court shall order an issue to be made upon, which shall be tried by a jury, and on their verdict judgment shall be rendered; *Provided*, that in a court of a justice of the peace he may try such issue, unless a jury be demanded, and then the proceedings are to be conducted in all respects as in jury trials before courts of justices of the peace. When a garnishee shall, on oath, confess that he has in his hands, any property of the defendant of a specific nature or is indebted to such defendant by any security or assumption for the delivery of any specific article, except as hereinafter excepted, then the court shall immediately order a jury to be empanelled and sworn to inquire as to the value of such specific property; and the verdict of the jury shall subject such garnishee to the payment of the debts or damages and costs of the plaintiff; *Provided*, that if such garnishee shall also state in his answer that said specific property was left, or deposited in his possession by the defendant as a bailment, or that he has tendered said specific articles agreeably to contract, and that they were refused by defendant, and that he then was, and always has been ready to deliver the same, and if such statement shall be admitted by the plaintiff or found by the jury or the court, then, in any such case, the garnishee shall be exonerated by the delivery of such specific articles to the sheriff, who shall proceed as if the attachment had been originally levied on the property. When any garnishee shall declare in his answer, that the money or specific article due by him will become payable or deliverable at a future date, and the same shall be admitted by the plaintiff or found by a jury or a court, such conditional judgment shall be entered against the garnishee, and the plaintiff may obtain judgment against the defendant for the demand, but shall not take final judgment against the garnishee without notice to show cause.

Guarantee Companies may sign the bonds of trustees, receivers, administrators, guardians, executors, assignees, or other fiduciary, or of any party to a civil action or proceeding either for the prosecution thereof or for any other purpose, or of any officer of any town or city, when authorized by the board of commissioners or aldermen, or the bonds of any county officer. Such guarantee company must keep a general agent resident in the State upon whom service of process may be made, and must exhibit its financial condition to the secretary of State, who shall examine its solvency at least semi-annually, and he must certify that the corporation is solvent to an amount not less than \$100,000, and at least

four times the penalty of the proposed bond. Such corporation, before doing business in this State, shall pay a license fee of \$100. It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its State, or government to do the business it proposes to transact; that it has, if a stock company, a fully paid up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than one hundred thousand (\$100,000) dollars; and is solvent to an extent of not less than fifty thousand (\$50,000) dollars, and that its capital and assets are well invested and immediately available for the payment of losses in this State. The fiduciary giving such bond may be allowed half of the expense of giving such bond, not exceeding half of 1 per cent per annum.

Holidays. January 1, January 19, February 22, May 10, May 20, July 4, first Monday in September and a day appointed by the governor as a day of thanksgiving, and December 25. And whenever any such holiday shall fall on Sunday, the Monday following shall be the public holiday. When the day of maturity of a note falls on Sunday or a holiday, the note is payable on the next succeeding business day.

Homestead. (See Exemptions.)

Husband and Wife. (See Married Women.)

Injunctions. Temporary injunction is granted in actions for permanent injunction, or to prevent acts in violation of plaintiff's rights respecting the subject of the action, or to prevent defendant's fraudulent disposition of its property, during the pendency of the action. Justified undertaking for costs and damages is required. Judgment dissolving the injunction may carry with it judgment for damages against the plaintiff and his sureties on said undertaking, without the requirement of proofs of malice or want of probable cause in procuring the injunction. If an injunction is granted without notice, the opposing party may now apply to the judge for dissolution of the same upon notice to be fixed by the court of not less than two nor more than ten days. The object of this statute is to prevent hasty injunctions and to enable improperly granted restraining orders to be quickly dissolved.

Instalment Leases. All leases which provide for the payment of certain amounts at stated intervals, to be taken in payment for the property leased if paid promptly and in full, but to be regarded as rent for the use of the property in case of default, are construed by our courts to be conditional sales. They should be registered. In case of default, the lessee has the right to have the property sold, the balance due paid the lessor out of the proceeds and the residue turned over to him.

Insurance. No insurance company can do business in North Carolina unless it shall have been licensed by the insurance commissioner. The company must appoint an agent who shall be a citizen and resident of the State upon whom process can be served, and it must stipulate that in the absence of such agent any process affecting it may be served upon the insurance commissioner, but any service upon any company that is licensed to do business in the State shall not be valid unless made upon the insurance commissioner, the general agent or some officer of the company. A service upon a local agent will be insufficient. It must file with the insurance commissioner a statement of its business standing and financial condition on the preceding 31st day of December, and also a copy of its charter, articles of association, or other statement showing the mode in which it proposes to do business. A judgment against an insurance company is made a lien upon all the property, real and personal, which are owned by the company in this State, and it is made the duty of any agent in the State, upon whom notice of the judgment is served, to pay his principal's money in his hands to the use of the judgment creditor. Insurance companies are required to make annual reports to the insurance commissioner.

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.

Judgments of United States Courts. Judgments of United States courts within this State may be docketed as State court judgments.

License. Licenses to do business are required to be taken out, and license taxes to be paid, by various persons and corporations, among which are the following: Mercantile agencies, transient dealers in merchandise, peddlers, itinerant salesmen selling on the street or in houses rented temporarily, manufacturers of sewing machines, manufacturers and dealers in pianos and organs, persons, etc., putting up lightning rods, itinerant vendors of clocks, stoves, and ranges, all kinds of insurance business. These taxes vary in amount. In some instances only a license from the State is required, and no municipal corporation can require a license; in others a license must be taken out in each county, etc. Some of the recent adjudications of the supreme court of the State on the validity of such license taxes, and to what extent the federal interstate commerce law is applicable in such cases, may be found in 115 N. C. 681, 705, 721; Book 25 Lawyer's Reports Annotated 810; 118 N. C. 328. There is no "drummer's license tax."

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 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. The power of sale of real property contained in any mortgage or deed of trust for the benefit of creditors, shall become inoperative, and no person shall execute any such power when an action to foreclose such mortgage, or deed of trust, for the benefit of the creditors, would be barred by the statute of limitations.

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. A method has been provided by which married men whose wives are lunatics, may sell their real estate. The deed made under it conveys merely the right of the husband, reserving to the insane wife her right to dower, but apparently not her homestead.

Mines and Mining. It is made the duty of the commissioner of labor statistics to examine and inspect mines operated in this State and

make annual report to the governor. Coal mines must have two openings for egress and ingress, which must be provided within twelve months after the shipments of coal are commenced. Mines must be provided with artificial means of ventilation, and if they generate fire-damp, they must be examined daily. Any person who is injured by a willful or intentional failure to comply with these provisions by any owner, agent, or manager of the mine, shall have a right of action for any direct damage he may have sustained thereby, and in case of loss of life his personal representatives shall have such rights of action.

Minors. Minors of both sexes attain their majority at the age of 21. All persons under 21 years of age are incapable of making a contract (except for necessities) or of making a conveyance of lands which they may not avoid.

Mortgages. Mortgages and deeds of trust are required to be registered, 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 mortgages 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. Deeds of trust, mortgages, and similar sales shall be regulated as to time of advertisement and costs of the same, by the same statute which regulates sales under execution. 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. (See *Limitations*.)

Notaries are appointed by the governor for a term of years. Seal must be affixed to all official acts. Notaries public must state after their jurat the date of the expiration of the commission of the notary public. This is made mandatory on the notaries public, but it is expressly provided that the failure to perform this duty shall not thereby invalidate their official acts. (See *Deeds*.)

Partnership. Limited partnerships may be formed for the transaction of mercantile, manufacturing, or mechanical business by acknowledging and registering a certificate, setting forth the name of the firm, the general nature of the business, the name of the general and special partners, and the period at which such partnership is to commence and terminate. The terms of the partnership must be published immediately after its formation for six successive weeks.

Pleadings. Pleadings in civil actions are as follows: 1. The complaint of the plaintiff, consisting of a plain and concise statement of the facts which constitute the cause of action. 2. The answer or demurrer of the defendant. The answer must contain a general and specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief and a statement of any new matter constituting a defence or counterclaim. 3. The demurrer or reply of the plaintiff. 4. The demurrer of the defendant to new matter in reply. If any pleading be verified, all subsequent pleadings except demurrers must be verified. Pleadings may be verified before a notary public or the clerk of a court of record of another state, or a commissioner of affidavits for North Carolina. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief and as to those matters he believes it to be true; and must be by affidavit of the party, or if there be several parties united in interest, and pleading together, by one at least of such parties acquainted with the facts, if such party be within the county where the attorney resides, and capable of making the affidavit. The affidavit may also be made by the agent or attorney, if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the pleading is verified by any other person than the party, he shall set forth in his affidavit his knowledge, or the ground of his belief on the subject, and the reasons why it is not made by the party. When a corporation is a party, the verification may be made by an officer thereof; and when the State or any officer thereof in its behalf is a party the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. And no pleading can be used in a criminal prosecution against a party as proof of a fact admitted in such pleading. Any judge or clerk of the superior court, notary public or justice of the peace shall be competent to take affidavits for the verification of pleadings in any court or county in the State and for general purposes.

Pledges. A pledge is a deposit as security for a certain sum, and is valid without registration. The distinction between a pledge and a mortgage of personal property is (1) that in the former the title is retained by the pledger, while in the latter it passes to the mortgagee; and (2) that the delivery of the possession of the property to the pledgee is absolutely essential to a pledge valid between the parties, but not against creditors or purchasers; such delivery is not necessary to the

validity of the mortgage. Property delivered as a pledge, to secure a debt, and redelivered by the pawnee to the pawner, may be sold by the latter, and a good title passes.

Powers of Attorney. Powers of attorney authorizing the execution of deeds or other acts requiring a seal must be under a seal. It should be recorded along with the deed.

Receivers. A receiver may be appointed before judgment to preserve property during action, and afterwards to carry the judgment into effect; to preserve property during an appeal, and whenever the judgment debtor refuses to apply his property in the satisfaction of the judgment, and also in cases provided in the Code, where a corporation has been dissolved or is insolvent, or has forfeited its franchise, and in such other cases where it has been the practice of courts of equity to make the order. (See *Supplementary Proceedings*.)

Records. There is in every county a register of deeds, who has the custody and control of the record of all instruments registered in the county. Anyone may inspect these records, but the register is entitled to his legal fees for making any copy.

Revision. The last revision of the laws of North Carolina was in 1883, when the "Code of North Carolina" was adopted. Since that time the code has been materially altered in many respects, and needs revision. In 1905 the revision was made in two volumes called the "Revisal of 1905."

Service. Is made by reading the process to the party to be served. If made upon an infant under the age of fourteen, a copy must be left with the infant and with his parent, guardian or other person having custody of the infant. If upon an insane person, a copy must be delivered to such person and to his guardian or committee. If upon a corporation, a copy must be delivered to an officer or agent of the corporation. If the defendant have property in this State, but be non-resident, then the court may grant an order that the service be made by publication of the summons in either of the following cases: 1. Where the defendant is a foreign corporation and has property within the State, or the cause of action arose therein. 2. Where the defendant, being a resident of this State, has departed therefrom with intent to defraud his creditors, or to avoid the service of summons, or keeps himself concealed therein with a like intent. 3. Where he is not a resident of this State, but has property therein, and the court has jurisdiction of the subject of the action. 4. Where the subject of the action is real or personal property in this State, and the defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest therein. 5. Where the action is for divorce in cases prescribed by law. When the place of residence is known and is made to appear by affidavit, a copy of the summons, notice or other process accompanied by a statement as to the nature of the action or proceeding, may be served by the Sheriff or other process officer of the county and State where the defendant resides, in lieu of service by publication. There shall be attached to said summons or notice an affidavit of service. When the place of residence of a non-resident defendant is known and is made to appear by affidavit, personal service of summons may be made by the sheriff or other process officer of the county and State where the defendant resides, who shall make affidavit that he has read the summons and delivered to him a copy thereof. "A failure to keep up the chain of summonses issued against a party, but not served, by means of an alias or pluries summons, is a discontinuance to such party; and if a summons is served after a break in the chain, it is a new action to such party, begun when such summons was issued."

Statute of Frauds. (See *Frauds, Statute of*.)

Statute of Limitations. (See *Limitations*.)

Stay of Execution. Judgment in a justice's court only may be stayed upon security given, if asked for at the trial, as follows: For any sum not exceeding twenty-five dollars, one month; for any sum above twenty-five and not exceeding fifty dollars, three months; for any sum over fifty dollars and not exceeding one hundred dollars, four months; for any sum above one hundred dollars, six months. No stay is allowed upon a suit upon a former judgment.

Summons. (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 belonging to the judgment debtor unaffected by any lien and incapable of levy. 4. 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.

Testimony. (See *Evidence*.)

Transfer of Corporation Stock. The shares of stock in every corporation are personal property, and are transferable on the books of the corporation in such manner and under such regulations as the by-laws provide; and whenever any transfer of shares is made for collateral security, and not absolutely, it should be so expressed in the entry of the transfer.

Usury. (See *Interest*.)

Venue. Actions shall be brought as follows: Those concerning real property, or for the recovery of personal property in the county where the subject of the action is situated. Actions for the recovery of a penalty, or for forfeiture imposed by statute or against a public officer for an act done by him by virtue of his office in the county where the cause of action arose. On official bonds, or against executors or administrators, in the county where the bond is given, if not then in the plaintiff's county. In all other cases where the plaintiff, or defendant, or any of them may reside; and if none of the parties reside in the state, then in any county where the plaintiff may designate.

Warehouse Receipts. Every corporation conducting the business of a public warehouse must give bond to the clerk of the superior court of the county wherein is situated the warehouse, in an amount not less than \$25,000, for the faithful performance of its duties. Every such warehouseman shall, when requested thereto in writing by a party placing property with it on storage, cause such property to be insured; every such warehouseman shall, except as hereinafter provided, give to each person depositing property with it for storage a receipt therefor, which shall be negotiable in form and shall describe the property distinctly, stating the brand or distinguishing marks upon it, and if such property is grain, the quantity and inspected grade thereof. The receipt shall also state the rate of charges for storing the property, and amount and rate for any other charges thereon, and also the amount of the bond and name of the company in which the bond is taken, given to the clerk of the court as aforesaid. Provided, that every such warehouseman shall, upon request of any person depositing property with it for storage, give to such person his non-negotiable receipt therefor, which receipt shall have the words "non-negotiable" plainly written, printed, or stamped on the face thereof. And provided, that the assignment of said non-negotiable receipt shall not be effective until recorded on the books of the warehouseman issuing them.

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. 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 within this State before a justice or a clerk of the supreme court, or a notary public; and within district in this State for which an officer is appointed or elected before a judge or clerk of a court of record, a mayor of city, registrar of deeds, a justice of the peace, a U. S. circuit or district court commissioner, or a county auditor, and 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, secretary of legation, a consul, vice-consul, or consular agent of the United States resident where made, a judge, clerk, registrar, or commissioner of a court of record of the country where made, or a notary public of such country, or an officer authorized by laws where proof or acknowledgement is taken, to take such; any deputy of these officers in name of principal as deputy, or by such deputy as deputy. 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.

A Justice of the Peace within the State is not required to attach seal.

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 the thirty days. When property of defendant is attached, and in actions affecting real property, and for divorced, summons may be served by publication when defendant is a non-resident or cannot be found. 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 or some competent person whom he or she may request to have appointed; 2, his heirs; 3, his creditors; 4, any person legally competent, for lack of any other classes. An executor or administrator must be over twenty-one years of age. 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 notice of entry of same, and judgments by default within one year from date of entry of the same; and appeals must be taken from orders within sixty days after notice of granting order, 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.

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. In an action to recover purchase money for personal property sold to the defendant an attachment may be issued and levied upon such property. (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.

8. It cannot carry among assets at any one time loans wholly upon real estate security (and they only on first mortgage) exceeding one half its capital stock and surplus and must not guaranty payment or collection thereof.

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 80 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.
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 \$10,000. 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.

No transfer of stock is valid against the bank or any creditor thereof as long as registered holder is liable for any part due indebtedness, and no dividends can be paid on such stock as long as such liability continues. Every transfer of stock becomes, in proportion to his shares, responsible for liabilities of prior holders thereof.

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 until approved by the State banking board.

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, unpledged and in his own right, must be sworn, and oath filed with public examiner.

Reports. At least five 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, in addition to the amount invested in such shares. Such liability continues one year after any transfer.

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, and shall not have or carry among its assets loans dependent wholly upon real estate security.

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.

Insolvency. The State banking board, in case of violation of law or by insolvency of any banking association, takes charge of insolvent bank and appoints a temporary receiver, pending action of the courts.

Other Business. No bank shall as principal employ any of its assets in trade or commerce, or invest them in stock, corporation, bank partnership or firm, nor in speculative margins or other commodities.

Banking Board. The governor, secretary of State, and attorney general constitute the State banking board, and have charge and control of all State banking organizations and make rules for their government, examine all reports and approve or disapprove the same.

The law known as the Negotiable Instrument Act, recently enacted in several states is now in full force here.

Bills of Lading. A bill of lading passes all the title which the first holder had when he received it to every subsequent endorsee in good faith and for value in the ordinary course of business, with like effect and in like manner as in case of bill of exchange.

If made to bearer, transfer thereof by delivery passes same title as by endorsement.

Carrier must deliver to consignee, on demand, any reasonable number of bills of lading of the same tenor. Carrier is exonerated from liability by delivery thereof in good faith to holder of bill of lading properly endorsed or made in favor of bearer.

Chattel Mortgages. A chattel mortgage must be subscribed by the mortgagor in the presence of two witnesses, or acknowledged

before an officer authorized to take acknowledgments, 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 filing 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. For sale of real property must be in writing, signed by the vendor or by his agent thereunto authorized in writing.

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. Domestic corporations must file a report during the month of July in each year with the secretary of State, and failure to do so forfeits the charter. 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. These provisions do not apply to corporations created for religious or charitable purposes only, nor to the holding and disposing of real estate acquired only by foreclosure or otherwise, in liquidation of mortgages or other securities. 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.

Costs. Costs are allowed to the prevailing party in suits.

Courts. There are eight 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, except in a few counties where county courts have concurrent jurisdiction with district courts in civil actions where amount in controversy does not exceed \$1,000. Two terms of district court are held each year in all organized counties and oftener in a few counties. Each organized county has a county court, and the county courts have exclusive probate jurisdiction. Justices' jurisdiction is \$200.

Creditors' Bills. Creditors' bills are permissible.

Days of Grace are not allowed.

Deeds. Deeds must be subscribed by the grantor or by his agent thereunto authorized in writing. To entitle them to record they must be acknowledged. No seal or witnesses are necessary. Can be recorded on proof by witness if not acknowledged.

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. When taken outside the State on notice they can be taken by a judge, justice or chancellor or clerk of any court of record, a justice of the peace, notary or mayor, or a commissioner of the state.

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, and if both father and mother are dead and the decedent leaves brothers and sisters or children of a deceased brother or sister, then in equal shares to the brothers and sisters of decedent and to the children of any deceased brother or sister by right of representation. If the decedent leave no issue, nor husband, nor wife, the estate must go to the father, and if he be dead, to the mother. If the decedent leave a surviving husband or wife, and no issue, and no father nor mother, nor brother, nor sister, nor children of a deceased brother or 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 through 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. 7. If the decedent leaves no husband, wife, or kindred, the estate escheats to the State for the support of the common schools.

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. 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 the commencement of action, and a citizen of the United States, or have declared his intention to become such.

Dower. Dower is abolished.

Evidence. Evidence may be given in court orally or by deposition taken in accordance with law. (See *Depositions*.)

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, if a head of a family may select from all other of his personal property, goods, chattels, merchandise, money or other personal property up to \$1,500 in value, where debt was incurred before July 1, 1901, and \$1,000 when incurred after that date 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.

Foreign Corporations. No foreign corporation except an insurance company can transact any business within this State, or acquire, hold, or dispose of property, real or personal, within the State until it 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 the secretary of State and his successors its true and lawful attorney upon whom all process in any action or proceedings against it may be served, and therein agrees that any process that may be served upon said attorney shall be of the same force and validity as if served upon it personally in this State, and that such appointment shall continue in force irrevocable so long as any liability remains outstanding in this State. The secretary of State is required to mail forthwith copy of process served to such corporation at its principal place of business, or if it is a corporation of a foreign country, to its resident manager in the United States, or to such other person as may have been previously designated by written notice filed in the office of the secretary of State. Failing to comply with these provisions renders every officer, agent or stockholder of such corporation jointly and severally liable on any and all contracts of such corporations made within this State during the time it is in default, and every such contract made without complying with these provisions, is wholly void on behalf of such corporations and its assigns but may be enforced against it. They must file with the secretary of State between July 1 and August 1 of each year, a report showing the location of the principal office in this city, names of officers with their residence and post office address, date, expiration of their terms of office, whether or

not they are pursuing active business under charter and kind of business engaged in.

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. Public corporations may be made defendants when owing or holding property belonging to the debtor.

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.

Guarantee Companies.

The Organization of annuity safe deposit, surety and trust companies is provided for by law.

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

Injunctions. The writ of injunction, as a provisional remedy, is abolished. An injunction by order is substituted. Injunction may be granted when it appears by the complaint that plaintiff is entitled to relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act which would produce injury to the plaintiff. Or where, during litigation, it appears that defendant is doing, or threatens, or is about to do, or is procuring, or suffering some act to be done in violation of plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual. A temporary injunction may be granted to restrain such act and when, during pendency of action, it shall appear by affidavit that defendant threatens, or is about to remove, or dispose of his property with the intent to defraud his creditors, temporary injunction may be granted. Injunction may be granted at the time of commencing action or at any time afterwards before judgment. Security is required of the plaintiff.

Insurance Companies. Insurance corporations may be formed either on stock or mutual plan, by any number of persons not less than seven. Articles, in addition to requirements of general corporations, must set forth the kind of insurance proposed to be made and whether on stock or mutual plan, and the commencement and termination of the fiscal year, period for which it is incorporated not to exceed thirty years, and must be filed in the office of commissioner of insurance. One-third of directors and all executive officers must be residents of North Dakota and each director must hold in stock company capital stock of par value of at least \$500. Attorney-general must examine articles of incorporation and certify to the commissioner of insurance, who makes examination to ascertain if company has complied with the law, and if so, gives certificate to that effect, which when filed in the office of the register of deeds of county, of principal office, is authority to commence business. No stock insurance company can be incorporated with less than \$100,000 capital stock, 25 per cent of which must be paid in previous to issue of any policy, and the residue within twelve months, and no mutual company shall issue any policy until \$300,000 of insurance in not less than 100 separate risks have been subscribed for, but this does not apply to county mutual insurance companies.

Insurance Companies, Foreign. No foreign insurance company can take any risk or transact any business of insurance in the State until it shall deposit with insurance commissioner certified copy of its articles of incorporation, and statement of its financial condition and business, signed and sworn to by its president and secretary, and until it shall satisfy insurance commissioner that it is fully and legally organized and that it has fully paid-up unimpaired capital of not less than \$100,000, and, if a mutual company, that it has same requirements necessary for domestic mutual companies and that its capital and assets are well invested and immediately liable for losses in this State, and that its insurance on no single hazard is more than one-tenth of its assets. It must also file in the office of the insurance commissioner an instrument appointing him and his successors its true and lawful attorney upon whom process may be served, and therein agree that any process served upon him shall be of the same force and validity as if served on the company, and that such authority shall continue in force irrevocable so long as any liability of the company remains outstanding in the State. Annual statements are required to be published and filed with the commissioner of insurance, showing condition and business for year ending on the preceding 31st day of December—and must be rendered not later than the first Monday of February. No company can expose itself to loss or any one risk or hazard to an amount exceeding 10 per cent of its paid-up capital, exclusive of any guaranty, surplus or special reserve fund unless the excess is reinsured. No fire insurance company can insure in any one town or city property, other than dwelling houses, to an amount exceeding its net assets. The commissioner of insurance is authorized and empowered to make inquiries of any foreign company, recording its business, and it is the duty of such company to promptly reply to such inquiries. Agents are not allowed to act directly or indirectly in taking risks or transacting business for insurance without procuring certificates of authority showing that company has complied with the requirements of law. Before granting certificates of authority to do business the insurance commissioner must be satisfied by examination and evidence that the company is qualified under the laws. He is required, whenever he deems it prudent, to visit and examine, or cause to be visited by a competent person, any foreign insurance company applying for admission or already admitted to do business in the State, and such company must pay proper charges, including expense. Commissioner must, at the expense of the company, as soon as practicable after statements are filed, ascertain the net cash value of all life policies in force, but he may accept such valuation from the proper officer of the company of the insurance officer of State where located. Foreign insurance companies doing business in the State must at the time of making annual statement pay commissioner of insurance 2½ per cent of gross amount of premiums received in State during preceding year. Commissioner has power to revoke authority to do business within the State. Insurance business is prohibited, except through authorized agents who are residents of and have office or place of business in this State. Penalty for not making statement is \$100 for each day's neglect and for false statements from \$500 to \$1,000. Fees are required for filing articles of incorporation, annual statements, and other documents.

The Commissioner of Insurance may revoke licenses to do business in the state for cause and if any such company shall remove or make application to remove suit brought against it in any court of this State or any contract made or to be performed within this state shall be revoked.

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, and may be renewed by affidavit within ninety days before expiration of the ten years.

Jurisdiction. Courts of the State consist of the supreme court, district courts, county courts, courts of justices of the peace, and such other courts as may be created by law for cities, incorporated towns and villages. Supreme, district, and county courts are courts of record. The supreme court has appellate jurisdiction only, except that it may exercise original jurisdiction to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and such original and remedial writs as are necessary to the proper exercise of its jurisdiction. But it issues writs of habeas corpus only in case of strictly public concern involving questions affecting sovereign rights of the State, or its franchises or privileges. District courts have general jurisdiction. County courts have original jurisdiction in all probate matters, and in certain counties have concurrent jurisdiction—in civil actions where amount in controversy does not exceed \$1,000, and in criminal actions below felony. Courts of justice of the peace have concurrent jurisdiction with the district court in civil actions when amount in controversy does not exceed \$200, but have no jurisdiction in cases when the boundaries of, or title to real estate comes in question.

License. Commission merchants, express companies, sleeping car companies, abstractors, public warehousemen, dentists, pharmacists, physicians, pilots, ticket agents, and peddlers are required to procure licenses.

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: (a) actions upon a contract, obligation or liability, express or implied; (b) action upon a liability created by statute; (c) action for trespass upon real property; (d) action for taking, detaining or injuring any goods or chattels; (e) action for criminal conversion; (f) action for relief on ground of fraud; (g) action for foreclosure of mechanic's lien. 3. Within three years: an action against an officer for breach of official duty; an action for a penalty (three years) action for death by injury; (two years.) 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.

Mines and Mining. There are no mines within the State except for native coal.

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*.) Real estate mortgage cannot be foreclosed by agent or attorney, without power of attorney authorizing foreclosure. Agents and attorneys must have power of attorney to foreclose, which power must be filed with Register of Deeds and pleaded when foreclosure is by action.

Negotiable Instruments. The law known as the negotiable instrument law, recently adopted in several States, is in effect.

Notaries. Notaries are appointed by the Governor and possess the usual powers of notaries public. They must append to their signatures on acknowledgments the date of expiration of commission, the expiration must be disconnected from the seal. Each notary public is required to provide an official seal.

Notes and Negotiable Instruments. Law of notes and negotiable instruments is substantially what is called the negotiable instrument law recently adopted by several States. Notes taken for patent rights, stallions, jackasses, lightning rods, patent medicines, or for cure of diseases must have written in red ink or stamped across face, "given for a lightning rod" or "given for a stallion," or other purposes, as the case may be, and are non-negotiable.

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 bring suit in proper court according to amount within three months after date of rejection if then due or within two months after it becomes due, otherwise it is barred forever. 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. Time for probating will, within six years after testator's death, or if not made known within that time, within one year after its discovery.

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.

Records. Deeds and mortgages are recorded by the register of deeds in their respective counties, and chattel mortgages and other liens are filed with the register of deeds.

Redemption. The period of redemption from mortgage foreclosure and judgment sales of real estate is one year, and from foreclosure of chattel mortgages five days.

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.

Revision. The latest revision of the laws of the State is contained in the revised codes of North Dakota for 1905.

Service. (See *Actions*.)

Suits. (See *Actions*.)

Taxes become due and payable on the first day of December in each year. All unpaid taxes on real property become delinquent March 1st of each year. Unpaid taxes on personal property become due December 1st of each year and delinquent on the first day of March following. Personal property taxes draw interest at the rate of 1 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 April 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 the rate bid by purchaser at sale, together with a penalty of 5 per cent and all other taxes paid subsequent to said sale, and interest thereon at the rate of 2 per cent per month. Taxes and special assessments 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.

Testimony. (See *Evidence*.)

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

Transfers of Capital Stock. Certificates of stock may be transferred by indorsement, by the signature of the holder or his attorney or legal representative, and delivery of the certificate, but is not valid except between the parties thereto until entered upon the books of the corporation.

Trust Companies. (See *Guaranty Companies*.)

Warehouse Receipts for Grain. Each storage receipt for grain shall expressly provide that at the option of the holder the kind, quality and quantity of grain for which receipt was issued shall be on his demand delivered back to him at any terminal point or at the place where it was received upon payment of a reasonable charge per bushel for receiving, handling, storage and insurance, and in case of terminal delivery the payment in addition to above of regular freight charges on gross amount called for by tickets; such charges must be fixed in the storage receipt at the time of receiving the grain at elevator or warehouse and at the time of issuing receipt. No charges shall be made for cleaning grain unless actually cleaned; and it is not required that the identical grain be delivered but an equal amount of the same grade, or a receipt issued by a bonded warehouse or elevator company doing business at terminal points may be delivered. Grain stored in special bin is excepted from these provisions.

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 signa-

tures, 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 differ 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 admitted 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 \$30, although case was tried to a jury in justice court. Will lie if amount under \$30, 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 3317-18, 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 recorder of the county where the mortgagor resides. 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 employee, 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. The capital stock of a corporation may be increased, or 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. During the month of May each year domestic corporations shall make report to Secretary of State and pay a fee of one-tenth of 1 per cent upon outstanding capital stock. Said fee not to be less than \$10.00 in any case.

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 shall pay 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 and subjects corporation to heavy penalties. Upon compliance such corporations are not subject to process of attachment on the ground of non-residence. During the month of September each year, foreign corporations shall make report to Secretary of State and pay a fee of one-tenth of 1 per cent upon the authorized capital stock represented by its property and business in Ohio, said fee not to be less than \$10.00 in any case.

Costs. No costs allowed to successful party as and for attorneys' fees.

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 amounts from \$100 to \$300, except in cases involving title to real estate.

Creditors' Bills. Claims must be reduced to judgment, and same can be maintained for fraud.

Curtesy. (See Dower.)

Days of Grace. (See Notes and Bills.)

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 written 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 of

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, was reduced to writing by and was subscribed by the said witness respectively in my presence, and was continued from day to day, as above set forth, that said deposition was 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 relic 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 relic 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.

Evidence. 1. A party shall not testify where the adverse party is a guardian or an executor or administrator, or claims or defends as heir

grantee, etc., except to facts which occur subsequent to the appointment of said guardian, etc. 2. Where the action or proceeding relates to the contract made by a person since deceased. 3. If a party having an interest testify the latter may testify to same transactions. 4. If evidence of conversations is offered, the latter may testify concerning same. 5. In an action against a partner, the adverse party shall not testify as to conversations or admissions, unless they were made in the presence of the surviving partner. 6. If the claim or defense is founded upon a book account, the party may testify that the book is an account book, and it is a book of original entry, and the books may become competent evidence. 7. If a party after testifying orally die, his evidence may be proved on a further trial of the case. 8. If a party die and his deposition be offered in evidence, the opposite party may testify as to all competent matters therein. These rulings of evidence do not apply to actions for causing death or any proceedings involving deed, will, or codicil.

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, 240 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.

Foreign Corporations. (See *Corporations*.)

Garnishment. (See *Attachment*.)

Guarantee Companies. The law now provides that guarantee companies complying by deposit of securities are excepted on statutory bonds.

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.

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

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.

Jurisdiction. (See *Courts*.)

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 trespass, 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, when the day of maturity falls upon Sunday or a legal 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. 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.

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

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.

Service. Service may be made by publication for non-residents of State.

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. Land 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.

Testimony. (See Evidence.)

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

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MESSRS. COTTELL & HONOR, 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 abstractors 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 any justice of the peace, notary public, county clerk, clerk of the district court or probate judge. Outside of the Territory, and within United States, before a notary public, clerk of a court of record, commissioner of deeds duly appointed by the Governor of the Territory for the county, State or Territory where the same is taken. Without the United States, before any court of record or clerk of such court or before any consul of the United States.

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 value of estate equals \$5,000; if under \$5,000, four months. 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 way, 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; and for a reasonable attorneys fee in case the attachment be wrongful, 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 \$10,000 in cities having less than 2,500 inhabitants; or less than \$15,000 in cities having more than 2,500 and less than 5,000 inhabitants; or less than \$20,000 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 Exchange. (See *Notes and Bills of Exchange.*)

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.

Collaterals. No statutory regulations.

Conditional Sales. Contracts constituting conditional sales or true copies 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 promisor by any other person, to which the promisor 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 promisor, is a good consideration for a promise. Provisions of the statute of frauds are in force. (See *Holidays, Judgments.*)

Conveyances. Husband and wife may own and convey property separately without the other joining, except homestead. In case of conveyance or mortgage of, or contract relating to homestead, the same may be avoided by one not joining in instrument. Conveyance valid between parties without being recorded, but no deed, mortgage, contract, bond, or lease (for more than one year) is valid against third persons unless recorded, except in case of actual notice. Deed intended as security is a mortgage, and must be recorded and foreclosed as such. Power of attorney must be executed and acknowledged same as deed, and also recorded. To admit to record. Acknowledgment indispensable, in case of instruments affecting real estate. Statute prescribes forms of deeds and mortgages and acknowledgments, which must be complied with in words or substance. (For *sales of merchandise see Sales.*)

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, and in mining, manufacturing, and industrial corporations they are jointly and severally liable for labor debts. 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.

Costs. As a general rule costs follow the judgment, and are awarded to successful party, in all cases for recovery of money, or specific real or personal property, but in other cases are awarded and apportioned in discretion of court.

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 probate matters, 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.

Creditors' Bills. No statutory provisions. Remedy exists as allowed in equity. Statutory proceedings are provided as supplemental to executions. This remedy concurrent with that in equity.

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

Deeds. (See *Conveyances.*)

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 curtesy 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. Alimony may be obtained without a divorce for same causes as divorce is allowed.

Dower. Curtesy and dower both abolished.

Evidence. (See *Affidavits and Depositions.*) Adverse party competent. Parties to transactions with deceased persons incompetent. Children, under ten years, appearing incompetent, and husband and wife for or against each other, except in case of agency, incompetent. Also attorneys concerning communications to client, and advice thereon, and clergymen, concerning confession made to him in his professional character in course of discipline enjoined by his church, are incompetent, without consent. Documents may be inspected after notice. Provisions for admission of documentary evidence under prescribed certificates. Authority is given for perpetuating testimony, pursuant to terms of statute.

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 proceeds 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; one 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.

Foreign Corporations. Before they shall transact business, they must appoint agent who is resident of Territory, on whom process may be served, and file copy of appointment with Secretary of Territory and Registrar of Deeds of county where agent resides. Also copy of articles must be recorded with Secretary. Suits may be brought in county where agent resides, or in any count in which the business or any part of it involved arose.

Foreign Judgments. They are basis of suit as elsewhere, but limitation statute is one year.

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. Also, they must deposit with Territory Treasurer, to satisfy judgments against them, \$50,000, in cash, or bonds, warrants or securities to be appraised by Bank Commissioner. May qualify as guardian, curator, executor, administrator, assignee, receiver, or trustee without bond. Must also file with Attorney General copy of charter or articles of incorporation, and a sworn statement of assets and liabilities. Must also keep deposit good, and upon certificate of compliance by Treasurer, Attorney General grants authority to transact business.

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 necessities. 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, in-cumber, manage, or control property of former.

Injunctions. Allowed as provisional remedy, or as final judgment in a suit. Bonds required in all cases, and they must include attorneys fees.

Insolvency. No special procedure, except in case of assignments, which may be made by insolvents. Under that statute a person is insolvent when he is unable to pay debts as they mature.

Insurance Companies. Extended regulations guarding public interests and providing for inspection. Reports required.

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 from time entered on docket. 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.

Jurisdiction. (*See Courts.*)

License. Regulated by municipal ordinances. In case of pharmacists and physicians granted by territorial board.

Liens. (*See Mortgages.*) Also allowed in case of labor upon personal property, but dependent upon possession; and to vendors of real estate for unpaid purchase price. Mechanics' liens allowed. In case of contractor, statement must be filed in four months; sub-contractors, sixty days. Suit must be commenced in one year from time of filing statement, or from maturity of note given for the debt.

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 hereinafter 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.

Mines and Mining. Provisions for special incorporation. All stockholders liable individually to laborers and mechanics, after execution returned *nulla bona* against corporation, if suit brought in four months. Reports to authorities required.

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 purchaser 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, and can only be foreclosed by action in court.

Notaries. Appointed by Governor. Must give bond and act within county of residence. General authority conferred to take all acknowledgments and administer oaths.

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.

Partnership. May be general or special. If names not disclosed in style, certificate must be filed and advertisement made. Special regulations concerning special partnership, limiting liability to amount of contribution to company, except in case of violation of statute.

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.*)

Records kept by clerks of all courts of proceedings therein. Register of Deeds keeps record of all instruments affecting real and personal property.

Redemption. No redemption after sale of real estate by sheriff, pursuant to decree of court. In case of tax sale, two years are allowed from time of sale, after which tax deed issues. Limitation of action to set aside tax deed, one year.

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, showing: 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.

Revision. Power as to legislation vested in legislature, except that Congress may make any and all laws for the Territories, and all territorial legislation in conflict therewith fails.

Sales. Sales of stocks of merchandise other than in the ordinary course of trade are fraudulent and void as against creditors unless five days before sale the seller and purchaser make a full inventory of stock and cost prices, and unless the purchaser ten days before sale, in good faith, demand and obtain written answers, of the seller as to names and places of residence of the creditors and the amounts owing them, and unless the purchaser retain such inventory and answers six months after the sale, and unless ten days before the sale the seller notify all creditors by registered mail. Failure of the seller to truly answer such questions, punishable as a misdemeanor with fine not less than \$300 nor more than \$500, or by imprisonment in county jail not exceeding thirty days, or both, at the discretion of the court. These regulations do not apply to sales by executors, administrators, receivers, or public officers.

Service of summons and subpoena, made by sheriff or constable in his jurisdiction, county, or township, respectively. May be made by publication in divorce cases, in actions to establish or set aside wills, in cases of debts or property sought to be taken by provisional remedies, in actions where the subject of the suit is property in the Territory, but in these cases defendant must be non-resident. Publication also allowed where defendant has left Territory, or county of residence, to defraud creditors, or to avoid service of summons, or conceals himself with like intent. Time of publication three weeks, but answer day must be forty-one days after first publication. Personal service out of Territory by county sheriff (no other person), giving defendant sixty days to answer, is allowed and is equivalent to publication.

Suits. (See Courts.)

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. Delinquent taxes bear interest at rate of 18 per cent per annum.

Testimony. (See Evidence.)

Transfer of Corporation Stock. Subject to regulation of corporation, except in case of non-resident owner, affidavit or bond may be required by officers for protection.

Trust Companies. Provision for organization by three or more persons. General authority conferred to hold and administer funds, to perform official acts, make guaranties, loan money, negotiate bonds, etc. Amount of capital stock must be not less than \$200,000, one-half of which must be paid in cash when articles are filed, and balance within six months. Regulated as trust companies, and must make a deposit as security, and obtain certificates and authority to act in same manner.

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 (B. and C. Code (1902) Secs. 5343-5344), 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 consecutive 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 reported to the court within ten days and objections made, if any, within fifteen days thereafter. 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.

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 courts 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 attachments 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 garnished. 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 Exchange. (See *Notes and Bills of Exchange.*)

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.

Collaterals. No statutory provisions. Usual rules of law govern.

Conveyances. (See *Deeds, Acknowledgments, Mortgages.*)

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. The articles of incorporation, or a certified copy of the ones filed with the secretary of the state or with the county clerk, shall be prima facie evidence of the existence of such corporation and its right to do the business mentioned in said articles without any further evidence thereof. (Approved Feb. 10, 1905.)

If any corporation, except a corporation for educational, literary, scientific, religious or charitable purpose, shall, for two consecutive years, neglect or refuse to furnish the secretary of the state any statement required to be furnished under any laws of this State, or to pay to the State treasurer any fee or license required to be paid under any law of this State, its charter shall be declared void unless the Governor shall see fit to give further time for the filing of such statements and the payment of license or fee. Any person who shall exercise or attempt to exercise any power under the articles of incorporation after the same have been declared void, shall be deemed guilty of a misdemeanor and shall be punished by imprisonment not exceeding one year or a fine not exceeding one thousand dollars, or both, in the discretion of the court.

Suits or actions upon cooses in action arising out of contracts sold or assigned by any corporation dissolved by this act, may be brought or prosecuted in the name of the purchaser or assignee. (Approved Feb. 21, 1905.)

All corporations formed or organized under the laws of the State of Oregon for the purpose of engaging in the business of mining, shall, during the month of June of each year and on or before the 1st day of July, each year, furnish to the secretary of the state, upon blank to be supplied by him for that purpose, a correct statement, sworn to by one of its officers, before some officer authorized to administer an oath, setting forth in detail, the name of the corporation, the location of its principal offices, the name of the president, secretary and treasurer, the amount of the capital stock, the number of shares, the par value of each, the amount of work that has been done, etc., etc. Any such corporation whose annual output shall not exceed \$1,000 shall be exempt from paying the annual license fee as now provided, but in lieu thereof, shall pay an annual license fee of \$10.

(Will not set out all the requirements of this act, as the blank furnished by the secretary of state will show the same in detail.)

No such corporation will be required to make such statement, if it shall file the statement and pay the annual license fee required by "An act to provide for the licensing of domestic corporations and foreign corporations, joint stock companies and associations."

A sale, lease, assignment or transfer of business, franchise and property as a whole of any corporation now existing or hereafter formed in this state, may be made with the consent of the stockholders, holding of record as much as two-thirds of the capital stock of such corporation, provided such consent be expressed at a regular meeting of such stockholders and the conveyance be in consideration of lawful money of the United States. (Approved Feb. 21, 1905.)

Private corporations may be formed under a general law by three or more persons, and organization may be perfected after half or more of the capital stock has been subscribed. Organization fee to State depends on capital, ranging from \$10 to \$100.

Articles of Incorporation must be executed in triplicate and acknowledged and one filed with the Secretary of State, one with the clerk of the county court where the business of the corporation is to be carried on, and the third retained by the corporation.

A director must be a stockholder in the corporation and a majority must be residents of the State of Oregon, except that in mining corporations a majority of the directors may reside out of the State.

Stockholders are liable for the indebtedness of the corporation to the amount of their stock subscribed and unpaid for, and no more.

Foreign corporations may do business in this State as freely as domestic corporations, upon complying with the laws of this State. Are required to have an attorney in fact resident within the State and file declaration of intention to engage in business within the State, accompanied by certified copy of the charter, and pay an initial fee of \$50.

Both domestic and foreign corporations, excepting only those hereinafter mentioned, and those organized for any educational, literary, scientific, religious or charitable purpose, pay an annual license fee based on their authorized capital stock as shown by annual report required. Such fees are as follows: On capital stock not exceeding \$5,000, \$10; on capital stock \$5,000 to \$10,000 \$15; on capital stock \$10,000 to \$25,000 \$20; on capital stock \$25,000 to \$50,000, \$30; on capital stock \$50,000 to \$100,000 \$50; on capital stock \$100,000 to \$250,000 \$70; on capital stock \$250,000 to \$500,000, \$100; on capital stock \$500,000 to \$1,000,000, \$125; on capital stock \$1,000,000 to \$2,000,000, \$175; over \$2,000,000 \$200. But mining corporations organized under the laws of this State whose annual output shall not exceed in value the sum of \$1,000, shall pay in lieu thereof an annual license fee of \$10.

Every foreign corporation engaged in the business of fire or marine insurance, suretyship, or express or brokerage shall make deposit in securities to the amount of fifty thousand dollars with the State treasurer, and file its articles of incorporation and execute a power of attorney to a resident of the State.

The Legislative Assembly shall not enact, amend, or appeal any charter or act of incorporation for any municipality, city, or town. The legal voters of any city or town are granted the power to enact and amend their municipal charter subject to the constitution and criminal laws of the State of Oregon.

Costs allowed prevailing party where recovery exceeds \$50, except that in equity costs are in discretion of court.

Curtesy. The husband, on the death of his wife, shall hold the lands of which she was seized in her life-time as tenant by curtesy, and it is not necessary that there should have been issue born alive.

Courts. The justice court has 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 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.

Creditors' Bills. General rules of equity govern.

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. (B. and C. Code, Sec. 818.) 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. (B. and C. Code, Sec. 829.) 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. (B. and C. Code, Sec. 830.) 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. (B. and C. Code, Secs. 835-6-7.) 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. 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, subject to husband's life estate by curtesy in whole or wife's life estate by dower to one-half. 2. If the intestate shall leave no lineal descendants, such real property shall descend to the wife or

mortgage. 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.

Notaries. Appointed by Governor for two years and give bond of \$500.

Notes and Bills of Exchange. The Negotiable Instrument Law as prepared by the American Bar Association, has been adopted by this State and is the law governing bills, notes, etc.

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.

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

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

Records. Public records are notice to the world of their contents when duly recorded.

Redemption. Lands sold on execution may be redeemed within one year from confirmation of sale. (See also *Taxes*.)

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*.)

Service must be personal on residents within the State or in certain cases by publication or personal service on non-residents.

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 \$300,000 can engage in business in Oregon, provided a deposit is made with the State treasurer of \$50,000 in U. S. or State bonds, cash or other designated securities or approved real estate is owned in value, \$65,000. 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. Real property shall be sold for taxes to the person who offers to pay the taxes, costs, and penalties, and take a certificate at the lowest rate of interest, not exceeding 10 per cent. Tax deed may be issued at any time after three years, but redemption may be made before issuance of deed, upon payment of taxes, costs, penalties, interest and subsequently accrued taxes. Any tax levied by any county for any purpose shall be conclusively deemed to have been paid at the end of six years from the time when such tax became delinquent. Rebate of 3 per cent is allowed on taxes paid on or before March 15th and taxes are delinquent after the first Monday in April, except that one-half may be paid then, and the balance postponed to the first Monday in October.

All sheep brought into the State for pasturage by the year or any fraction of a year shall be taxed at 20 cents per head, and when driven from the State or any county in the State, such sheep shall be taxed at 5 cents per head for each and every county through which such sheep are driven. (Approved Feb. 21, 1905.)

All property within the jurisdiction of the State, whether belonging to the inhabitants of this State or any other State, which shall pass by will, statute of inheritance, deed, grant, bargain, sale, gift or otherwise, shall be, and is, subject to taxation, and all heirs, legatees and devisees, administrators, executors and trustees, are respectively liable for such taxes. (Approved Feb. 21, 1905.)

All live stock that is kept, driven or pastured, or is permitted to range or graze in more than one county, shall be subject to taxation in each county in proportion to time it is kept, driven or pastured in such county. All counties, cities, school districts and other corporations which are vested with the power of levying taxes, shall make their total levy terminate in even mill or mills or in fractions of one-tenth of one mill.

Torrens System. Legislation has been enacted, authorizing the Torrens System of registration of land titles, but no use has yet been made thereof.

Transfer of Corporation Stock must be on the books of the corporation.

Trust Companies. A corporation may organize to conduct any lawful business.

Usury. (See *Interest*.)

Warehouse Receipts. Transfer of receipt transfers commodity.

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 R. T. M. MCCREADY Esq., Attorney at Law, Pittsburgh. (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, but must be fully itemized.

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, United States commissioner of any circuit or district court in the State of 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, and in Cuba, Porto Rico, the Philippines, or other United States possessions before a major or higher officer of the regular or volunteer army, or before any civil officer of the United States service, the official character of the officer to be proved by his seal, or in the absence of a seal, by the certificate of a United States officer of such place, with a seal. 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, Pittsburgh, Allegheny, Carbondale, Scranton, Williamsport, Lock Haven; recorder of deeds, probate notary, or clerk of any court of record of the county in which the land is situated, and justices of the peace.

Since Act of April 4, 1901, a married woman may make acknowledgment in the same manner and form as a *Femme sole*.

A corporation may acknowledge a deed or other instrument of writing by an attorney appointed for the purpose. The appointment may be embodied in the instrument and the certificate of acknowledgment shall be in substantially the following form: "I hereby certify that on this ____ day of ____ A. D. ____, before me the subscriber a ____ personally appeared ____ the attorney named in the foregoing ____, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said ____ to be the act of the said (corporation's name)."

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, in double the amount of the personal estate; with two sureties, if individuals, or one approved surety company, whose premium may be charged to the 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. The right of an alien to take, hold and transmit property is regulated by statute. By act of 1861, aliens could purchase and hold land not to exceed 5,000 acres and of a net annual income of not more than \$20,000. The act of 1887 (P. L. 298) apparently seeks to narrow this right. It has not been judicially construed, and in advance of such construction its meaning cannot be satisfactorily determined.

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 ball 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 appraisal 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. Insolvency Act of 1901 is similar to the United States bankruptcy law and has been decided by a common pleas court to be suspended while the United States bankruptcy law is in force as to cases to which the latter applies.

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. This form of attachment is an original writ, taking the place of a summons. A justice of the peace can obtain jurisdiction against a non-resident in this way only when the constable makes manual seizure of property of the defendant. Judgment pursuant to foreign attachment is in view, and binds the attached property only unless the defendant appears. 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. Under Act of 1901, not more than 10 per cent of the capital may be loaned to any one person, and loans can not be made upon the security of the capital stock of the banking institution making the loan.

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 but can not buy at his own sale except pursuant to contract. 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 be specifically enforced in equity where there is no adequate remedy at law, 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 three or more persons, one of whom at least must be a citizen 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 two 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 (*eo nomine*) although companies chartered to deal in merchandise at wholesale are licensed by the courts to sell liquors. Under the Act of 1901, corporations may be chartered for any one lawful purpose, and may hold the stock of other corporations. Corporations for profit pay to the State before a charter issues, a bonus of one-third of 1 per cent on the authorized capital. To avoid making this payment before the capital is issued, a charter may be taken out for a nominal amount and then the authorized capital increased, in which case the bonus is paid as the stock is issued.

In order that one corporation may have divers objects, several charters are taken out, each for one purpose, and then the corporations are merged, retaining all the purposes.

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 \$1,500, 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. In justice courts commissions may be issued to take depositions on interrogatories and cross interrogatories on eight days' notice, the same depositions to be used in common pleas court in case of appeal.

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 *Notes and Bills*.)

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. On collateral loans of any amounts above \$5,000 any rate of interest agreed upon may be charged.

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 docket. 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 whenever he may have deserted or separated himself from her without sufficient cause, or may have neglected or refused to support her; nor may she sue her husband 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.

Mechanics' Claims. The rights of parties furnishing labor or materials to buildings, bridges, pipe lines, railways, etc., as to filing liens, are defined and regulated by act of 1901.

In the case of tenancies, leaseholds, alterations and repairs, the claim must be filed in court within three months after the claimant's contract or agreement is completed; and in all other cases, within six months thereafter.

Any sub-contractor (one who furnishes labor or material by agreement with the contractor or his agent) must give to the owner written notice of his intention to file his claim, together with a sworn statement setting forth the contract, amount, items and date of last work done or materials furnished. Such notice must be served at least one month before the claim is filed and within three months after the last of his work was done or materials furnished if he has six months within which to file his claim, otherwise within forty-five days thereafter.

Mortgages are executed and acknowledged same as deeds, and lien inures 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 only 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 substantive law is codified in the Negotiable Instruments Law of 1901. 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 party in possession, or other person claiming title by affidavit, may take the property by filing bond within seventy-two hours. 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 on 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 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 personal estate. A married woman may dispose of her property by will in the same manner as if she were unmarried, saving the husband's right as tenant by curtesy and his right to take against her will; 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 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 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 superior court within forty days after the decree or order; and from any district court to the superior 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. Every person making an assignment at common law for the benefit of creditors shall file with his assignee a sworn, itemized schedule of all his assets, showing the amount and kind of his property, where located, and the cash value thereof, to the best of his knowledge and belief, and a list of his creditors stating their names, residences, and the amounts due each of them, and the evidences thereof and securities therefor, if any, held by them. Such deed and assignment must be recorded, and the assignee must give public notice of his qualification to all creditors to present claims and to all debtors to make payments to such assignee, in some newspaper published in the county in which such assignor resides or is located, and such assignee shall also notify creditors in like manner by mail. One fifth in amount of the creditors of the assignor, by petition to the superior court, may require assignee to give bond to the superior court, with good surety, in the amount of the total value of all property conveyed by the deed of assignment, conditioned on the faithful performance of his duties. Such assignee may be required to make an itemized, sworn report in writing to the superior court of all his doings under his trust.

Attachment. Attachment process may be issued from the superior 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 by June 30th 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.

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

Bills of Lading. Every person intrusted with and in possession of any bill of lading, warehouse receipt, or of any warrant or order for the delivery of goods, shall be deemed the true owner of the goods so by him possessed or described in either of said instruments in favor of the purchaser or pledgee of such goods for money or negotiable security: Provided, that such purchaser or pledgee, at the time of payment or advance as aforesaid, shall have had no notice or knowledge that the possessor of

such goods or instrument was not the true owner of such goods by him possessed or in such instrument described.

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. No claims other than those presented as aforesaid can be enforced against said estate, unless claimant can show same was not duly filed by reason of accident or mistake or unforeseen cause. 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 superior 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 *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 incorporators 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 incorporators, 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.)

Costs. In civil actions at law, the party prevailing shall recover costs, except when otherwise specially provided, or as justice may require in the discretion of the court. No allowance is made to pay the expenses of litigation or attorneys' fees. Every non-resident plaintiff, upon motion of the defendant, shall give some sufficient person residing within the State, or some surety company authorized to do business therein, as surety for costs.

Courts. Terms and Jurisdiction. The law provides for a supreme court, a superior court, and twelve district courts. The supreme court is in session at Providence from the first Monday in October to the second Monday in July in every year, and at such other times as said court shall deem proper with a recess from the third Monday in February to the first Monday in March; provided, that the court may hold sessions at other places within the State whenever it may deem advisable. The supreme court has general supervision of all courts of inferior jurisdiction to correct and prevent errors and abuses therein when no other remedy is expressly provided; it may issue all extraordinary and prerogative writs and processes necessary for the furtherance of justice and the due administration of the law, and it has jurisdiction of petitions for trials and new trials, bills of exceptions and appeals. The superior court holds its sessions every year at the times and places following, to-wit: At South

Kingston, within and for the county of Washington, on the third Monday of October, December, March, and June; at Newport, within and for the county of Newport, on the first Monday of October, December, March, and June; at East Greenwich, within and for the county of Kent, on the fourth Monday of September, December, February, and May, and at Providence, for the counties of Providence and Bristol, on the third Monday in September, and thence continuously to the second Monday in July of the following year. The superior court has original jurisdiction of suits and proceedings in equity, petitions for divorce, all actions at law where title to real estate is in issue, except actions for possession of tenements let or held at will or by sufferance, of actions at law in which the debt or damages laid in the writ shall exceed \$500, of probate appealed cases, and, concurrently with the supreme court, of writs of habeas corpus, mandamus, quo warranto, and cases upon claims of jury trials from district courts. 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 \$500. The town councils are probate courts within their respective towns, and the municipal court of the city of Providence is the probate court 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-grandmother, 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 exist 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 superior court upon the petition of a domiciled inhabitant of the State, who has resided therein for two years next before preferring his petition, for either of the following causes: Marriage originally void or voidable by law; when party is for crime deemed 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 of either of the parties, or for a shorter period of time, in the discretion of the court; for continued drunkenness; for the habitual, excessive, and intemperate use of opium, morphine, or chloral; and for neglect and refusal, for the period of at least one year next before the filing of the petition, on the part of the husband to provide necessaries for the subsistence of his wife, the husband being of sufficient ability; and for any other gross misbehavior and wickedness, in either of the parties, repugnant to and in violation of the marriage covenant.

Dower. (See *Descent and Distribution*.)

Evidence. No man shall be compelled to give evidence criminating himself. The parties to suits may testify. Husband and wife of either party are competent witnesses in any civil case, but neither can give evidence tending to criminate the other, nor disclose communications made during marriage, except in divorce causes. Either party to a divorce case may testify.

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.

Foreign Corporations. Every foreign corporation, other than national banking associations and foreign insurance companies, shall appoint by written power some competent person, resident in this State, as its attorney, with authority to accept service of all process against such corporation in this State.

Foreign Judgments. There is no statutory provision as to foreign judgments.

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.

Guaranty Companies. (See *Surety Companies*.)

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

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

Injunctions may be obtained in actions brought for that purpose where legally entitled to same. Temporary injunctions may be granted in suits for permanent injunctions, pending decision on original action.

Insolvency. (See *Assignments*.)

Insurance Companies are controlled by the insurance commissioner, who may examine any of their officers or agents under oath, and to whom they must transmit true statements of their condition and business in the month of January in each year.

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.

Jurisdiction. (See *Courts*.)

Licenses. No license by commercial travelers is required in this State. Peddlers of merchandise must obtain a license from the State treasurer.

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 subcontractor has such lien, provided he gives written notice to the owner of the property affected thereby within thirty days after beginning 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 six months from any disallowance notice of such claim is delivered to creditor.

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.

Notaries Public are appointed by the governor each year, to serve until July 1st of the year next succeeding his appointment. They have power to administer oaths, take acknowledgments of deeds and other instruments, take depositions, and protest bills of exchange, etc.

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 23d 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.

Partnership, Limited, may be formed for mercantile, mechanical, or manufacturing business, but cannot transact insurance nor become banks of issue and circulation. The persons forming any such partnership shall make and severally sign a certificate, which shall set forth:

1. The name of the partnership. 2. The names and respective places of residence of all the general and special partners, distinguishing who are general and who are special partners. 3. The amount of the capital which each special partner has contributed. 4. The general nature of the business to be transacted. 5. The time when the partnership is to commence and when it is to terminate. This certificate must be acknowledged by all and recorded in the office of the town or city clerk in the town or city in which the partnership's principal place of business is located. [See Chap. 157 of the General Laws as to the liability of the partners.]

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.

Records, deeds, mortgages, and other writings required to be recorded are entered in the office of the town or city clerks, except in the City of Providence, where they are recorded in the office of the Recorder of Deeds.

Redemption. Property sold under execution, or foreclosed and sold under power of sale in a mortgage, cannot be redeemed. Real estate sold for taxes thereon may be redeemed within one year upon repayment to the purchaser of the amount of the tax with expenses and 20 per cent additional.

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."

Service. Supreme court writs are returnable not less than ten nor more than sixty days from the date of service; district court writs not less than six nor more than twenty days from the date of service. Service by publication, either under the statutes or by order of the court, in necessary cases.

Surety Companies must have a paid-up capital of \$250,000. Foreign surety companies must appoint, by written power, the insurance commissioner of this State to be their true and lawful attorney in and for this State. Such companies, complying with the law of this State, may become sureties on any bond.

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.

Testimony. (See *Evidence*.)

Transfer of Corporation Stock shall be made in such manner as shall be prescribed by the by-laws of the corporation. No bank officer shall permit the transfer of any bank stock until the taxes assessed thereon have been paid.

Trust Companies shall make return to the State auditor of their situation, as prescribed in Chapter 179 of the General Laws.

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.

Warehouse Receipts. (See *Bills of Lading*.)

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, RUTLEDGE & HAGOOD, 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 instru-

ment 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, unless such executor be a non-resident. (Act of 1902.) 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. Alien widows are entitled to dower and descent can be traced through aliens. It seems as if alien heirs at law and devisees cannot own more than 500 acres of land in this State.

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. Attachment may issue to secured purchase money of property real or personal.

Banks. Sec. 1776. 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. 1777. 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 1776, he shall be punished by fine or imprisonment, or by both this 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 683, 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 689 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 banks, 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 690: "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.

Sec. 1757. 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. 1758. 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. 1759. 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. 1760. 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; and any person swearing falsely to any account shall be deemed guilty of perjury, and shall be subject to the pains and penalties thereof.

Sec. 1761. 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. 1762. 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, and all persons convicted for felony, as herein provided,

shall be punished by imprisonment for a term not less than one year and by a fine of not less than \$1,000.

Sec. 1763. 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. 1764. 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. 1766. 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.

That said section shall apply to all private banking institutions whether chartered or not, and any person, firm or co-partnership conducting the business of lending money and receiving deposits, refusing or neglecting to publish the statement herein provided shall be deemed guilty of misdemeanor and upon conviction in any court of competent jurisdiction shall be fined in the sum of not less than \$100 or not more than \$1000 or imprisoned at hard labor for a period of not less than three months or not more than one year or both at the discretion of the court. Approved 19th Feb, 1904.

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.)

Bank Examiner. Sec. 1. Be it enacted by the General Assembly of the State of South Carolina, immediately after the approval of this Act, the Governor of the State shall appoint a competent person to examine, from time to time as hereinafter provided, into the affairs and the condition of all banks and banking institutions conducted by corporations or persons in this State. That in the selection of said bank examiner the governor may advise with the executive committee of the South Carolina Bankers' Association.

Sec. 2. It shall be the duty of such bank examiner, and he shall have power to make a thorough examination into all the books, papers and affairs of the aforesaid banks and banking institutions, and in making such examinations the examiner shall have authority to administer oaths and to summon and examine any and all persons connected with the said banks and banking institutions, and if any person in such examination before the bank examiner shall testify falsely, he shall be indictable as for perjury. The bank examiner shall make a full and detailed report of his findings and file the same in the office of the state treasurer, and in this report shall be set forth all violations, if any, of the banking laws of this State, and also such a full summary of the affairs of the bank, as shall be necessary for the protection of the rights of the stockholders, depositors and creditors of such bank.

It shall also be the duty of said bank examiner to forthwith bring to the attention of the said banks all such violations of the banking laws of this State and that the same be remedied or discontinued.

Sec. 3. The term of office of the said bank examiner shall be four years, and he shall receive as his compensation therefor three thousand dollars per annum, and also all actual expenses, whether traveling or otherwise, incurred by him in the discharge of his duties. He shall also be empowered to appoint an assistant at a salary of fifteen hundred dollars per annum, and to pay his traveling expenses while in discharge of his duties. The bank examiner shall also have the right to incur such reasonable expenses as are necessary in the conduct and management of his office. *Provided, However,* That the total of all his expenses as provided for in this Act, shall not exceed the sum to be derived by assessments from the various banks in this State, as herein provided for.

Sec. 4. The bank examiner shall make at least one examination every year of all the banks and banking institutions in this State, and for every examination he shall collect and pay over to the State Treasurer the following fees:

From all banks having one hundred thousand dollars (\$100,000) or more capital, fifty dollars (\$50.00); from all banks having over fifty thousand (\$50,000) and under one hundred thousand dollars (\$100,000) capital, forty dollars (\$40.00); from all banks having over twenty thousand dollars (\$20,000) and under fifty thousand dollars (\$50,000) capital, thirty dollars (\$30.00); and from all banks having a capital less than twenty thousand dollars (\$20,000), he shall collect twenty dollars (\$20.00). No bank shall be compelled to pay for more than one examination each year, unless such additional examination shall be requested by the stockholders as hereinafter provided.

The state treasurer shall hold such funds in his hands for the special purpose of paying the expenses of the state examiner and his office, and shall be payable upon the order of the said state bank examiner. The state treasurer shall include in his annual report to the legislature an abstract of the reports made to him by the state bank examiner, showing the financial condition of the banks examined by him as shown by the said reports, and also a schedule of the receipts and disbursements connected with the said state bank examiner's office.

Sec. 5. If the state bank examiner shall find that any of the said banks or banking institutions are insolvent, or that their business is being so dishonestly and fraudulently conducted as to jeopardize the interest of the depositors, creditors, or stockholders, he shall have full power, upon consultation with the state treasurer, to take and retain possession of all the assets and property of every description belonging to such bank or banking institution: *Provided,* He shall first have applied for and obtained an order to this effect from a circuit judge, either residing or presiding at the time, in the circuit in which such bank or banking institution is located, two days' notice of such application being first given to the board of directors of said bank of the application for said order. And it shall be his duty and he is hereby authorized and empowered to make proper application to the court for the appointment of himself or some other person as receiver to wind up and settle the affairs of such bank or banking institution.

Sec. 6. It shall be the duty of said bank examiner, at any time, upon receiving the petition of stockholders representing one-fourth ($\frac{1}{4}$) of the capital stock of any bank which may be incorporated under the laws of

this State to make forthwith a special examination of such bank and to file a report of the same with the state treasurer, and for such special examination the said bank shall pay to the state bank examiner for the state treasurer the same fees as is provided for one annual examination under this Act.

Sec. 7. That no person shall be appointed to the office of the State bank examiner unless he be an expert accountant and shall have had practical experience in the banking business; nor shall he qualify as such examiner until he shall have taken the oath provided for in the Constitution, and shall have filed in the office of the state treasurer a bond, in the sum of \$15,000 with sufficient surety to be approved by the state treasurer and conditioned for the faithful performance of his duties.

Sec. 8. The quarterly statements now required by law to be published by the banking institutions in this State shall hereafter be published not quarterly as heretofore, but when and as called for, by the state bank examiner, without previous notice to said banking institutions, and such statements shall be called for by said bank examiner at least four times each year, and published in some newspaper in the county wherein such banking institution is located.

Sec. 9. Any person who obstructs or interferes with the state bank examiner in any way in the performance of his duties shall, upon conviction, be deemed guilty of a misdemeanor, and shall be subject to imprisonment for not more than one year or a fine of not more than one thousand dollars, or both, in the discretion of the court.

Sec. 10. Nothing contained in the Act shall apply to any national bank.

Sec. 11. That all Acts and parts of Acts relating to the subject of bank examiner heretofore enacted in this State are hereby repealed.

Approved the 23d day of February, A. D. 1906.

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.

Consignments. A recent act requires railroad companies to furnish shippers or their agents full information of the movement and delivery of live stock while enroute on the company's line or in the company's possession. If company can not make time published in schedule they must, whenever three hours behind time, wire owner and agent at destination extent and cause of delay, and of expected time of arrival. Failure to furnish such information and to give shipper connections as published in schedule liable to a fine of \$25. Onus is with railroad to show that such failure was due to necessary use of wire for train orders.

Sec. 1. Be it enacted by the general assembly of the State of South Carolina, if any person, firm or corporation, shall have contracted to deliver to any other person, firm or corporation within this State certain commodities, no common carrier doing business in this State, over whose road such commodities would be transported before delivery to the consignee, shall interfere with the fulfillment of such contracts between such shipper of freight and the proposed consignee; nor shall undertake to control or direct, or in any wise interfere with, the shipment of such commodities by the party or parties who has contracted so to ship the same. To this end no common carrier doing business in this State, over whose road such commodities would pass in transportation before delivery to the consignee in this State, when furnishing cars to the shippers thereof, shall have the right to designate to what consignee freight loaded in such cars shall be consigned, or in any way to interfere with or seek to control the use of such cars by the shipper in making shipment to such consignees as he may desire to ship to, or be under contract to ship to.

Sec. 2. Any common carrier violating the provisions of this section shall be liable to such damages, including special and punitive damages, as may be found in an action maintained in the courts of this State. Any shipper or proposed consignee bringing suit for the violation of the terms of this act, may include in the same action actual damages sustained by him through such act of the common carrier as well as any special damages, and may also recover in the same action such punitive damages as may be allowed to him.

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 act 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.

Costs. Costs are allowed and follow the result of the action and are entered up in the judgment against the losing party.

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 magistrates. 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.

Creditors' Bills. (See *Suits*.)

Days of Grace. (See *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.

Descent and Distribution. Illegitimate children shall be heirs at law of the mother, so far as her property is concerned. The mother shall inherit from such child or children as if the child had been legitimate. In case of wrongful death of such child, or mother of such child, by negligent act of another, such child or such mother shall have the same rights and remedies in regard to such wrongful death or negligent act as though the child had been born in lawful wedlock.

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.

Evidence. (See *Depositions*.)

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 stopped 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.

Foreign Judgments. Foreign judgments may be sued on in this State and do not constitute a lien till sued on.

Fraud. The statute of frauds and perjuries commonly known as "the Statute of Elizabeth" is of force in this State.

Garnishment. No garnishment law in this State.

Guaranty Companies. (See *Fidelity and Surety Bonds*.)

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. Thursday in fair week in county in which State fair is held. No date fixed; usually in November, in Richland county.

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*.)

Injunctions. Writs of injunction may issue according to the principles and course of the common law not inconsistent with the constitution, subject on motion of either party to re-examination, affirmation, or reversal and final adjudication by the proper jurisdiction.

Insolvency. (See *Assignments and Insolvency*.)

Insurance Companies. Re-ent act enacts that all suits brought against any and all fire, life or other insurance companies doing business in this State may be brought in the county where the loss occurred; providing further for a change of venue on certain conditions.

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 twenty years from the time of entry, which lien may be extended to other counties by filing transcript.

Jurisdictions. (See *Courts*.)

License. Licenses are regulated by the municipal authorities.

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. Landlord's lien for rent extended to "his assigns."

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, devise 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.

Merchants. A recent act provides that it shall be unlawful for any merchant or corporation engaged in buying and selling merchandise, while he or it is indebted to sell the entire stock of merchandise in bulk, or the major portion thereof otherwise than in the ordinary course of trade without his making a full and complete inventory, the values therein being set at the ruling wholesale prices thereof, and making also a full schedule of all persons, etc., to whom indebted, giving the post office address of each creditor and the amount owing. This to be done under oath. Seller to deliver said inventory and schedule to the proposed purchaser and they each to preserve such papers for six months after such sale and purchase, open to inspection of creditors. Ten days before conclusion of sale, seller and purchaser shall give written or printed notice of such sale and purchase to creditors named in said schedule. Such notice shall state aggregate value of merchandise, consideration and the time of making payment.

In failing to carry out these provisions such sale shall prima facie be presumed to be fraudulent and void as against creditors of the seller, and the merchandise wherever found shall be liable to such creditors, and if any of the merchandise be withdrawn by said purchaser the purchaser shall be liable to said creditors personally to the extent of the value of the merchandise withdrawn. Notice sent by registered mail shall be conclusively presumed notice to the creditors to whom named.

Mines and Mining. Mines and mining of phosphate rock is regulated by the State by which a royalty is paid to the State on every ton so mined, to be paid by parties licensed to mine.

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 thereon within twelve months.

Notaries. Notaries are appointed by the governor and their term of office continues during the pleasure of the governor.

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*.)

Partnership, Limited and Special. Partnerships are formed; general partners only are authorized to transact business and sign for and bind the partnership. Special partners are not liable for the debts of the partnership beyond the funds so contributed to the capital.

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*.)

Records. The County and State officers are required to keep records in connection with their different offices. Attested copies of such records are good evidence in the courts of this State. Exemplifications of records of other States also allowed if allowed in the States from which copies are exemplified.

Redemption. (See *Chattel Mortgages*.)

Replevin. (See *Claim and Delivery*.)

Revision. The laws of this State are revised every ten years under the supervision of a code commissioner elected by the legislature.

Service. Service of process may be made by the sheriff or other designated person. A non-resident is served by publication.

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. Under A. A. of 22d of February, 1905, the stockholders of all insolvent banks and banking institutions, whether heretofore or hereafter incorporated, under act of assembly of this state, either general or special, shall be individually liable to the creditors thereof, other than depositors, only to the extent of the amount remaining due to the corporation upon the stock owned by them; Provided, that stockholders in all such banks and 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 persons 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.

Testimony. (See *Depositions*.)

Transfer of Corporation Stock. Corporation stock is transferred on the books of the company by the owner of the stock or his duly appointed attorney.

Trust Companies. Trusts and combinations made with a view to lessen, or which tend to lessen full and free competition in the importation, sale, or manufacture of articles, or that may lessen or affect in any manner full and free competition in any tariff rates, tolls, premiums, or prices, or seek to control them in any way, in any branch of trade, business, or commerce, are prohibited under penalties.

Warehouse Receipts. Warehouse receipts are negotiable unless otherwise specified on their face.

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 } ss.
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 } ss.
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.

(Signature and title.)

Acknowledgment by an attorney in fact must be substantially in the following form:

State of } ss.
County of } ss.
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 in-state 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 sixty days, a true inventory and appraisal of all the estate. The homestead, absolute exemption, and property exempt from execution, must be set apart to the family of decedent, and is not liable for any prior debts, except necessary expenses of last illness, and funeral charges, 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 in 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 of 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; expenses of administration; debts owing by decedent personally to servants and employees for services rendered within sixty days next preceding his death; debts having preference by the laws of the United States; all other demands, saving however the priority of liens on specific property by reason of mortgage, pledge, attachment, judgment, or execution levy. 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, on 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 embezzled 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, 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 five years.

In towns of 500 inhabitants or less, the capital must be at least \$5,000; 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. All of the capital stock must be paid in before the association shall be authorized to commence business. 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 five 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.

Each shareholder is individually responsible, equally and ratably, and not one for the other, for all contracts, debts, and engagements of such association, in an amount equal to twice the par value of the stock held by him or standing on the books in his name.

Each association shall at all times have on hand in available funds or deposited in other good solvent banks an amount equal to 20 per cent of its deposits.

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 former act went into effect (July 1, 1891,) from continuing such business without organizing corporations, as provided by the act.

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

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: 1. 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. 3. 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 encumbrance. A conveyance need not be witnessed. The only instruments which need be witnessed in this State are chattel mortgages and wills, 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 or 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.

Costs. A non resident plaintiff must furnish security for costs if the defendant demands it. Taxable costs follow the result of litigation.

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.

Creditors' Bills. There is no statutory provision for creditors' bills, as such. The suit, however, can be maintained. The method generally pursued for uncovering property which has been fraudulently disposed of is by an examination of the debtor under supplementary proceedings.

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

Deeds. (See *Conveyances; also Acknowledgments.*)

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.

Evidence. Parties may testify for or against each other. No witness is excluded because of an interest in the event of the suit, except that when the adverse party is an executor, administrator, heir at law, or next of kin, neither the other party nor any person who has or ever had any interest in the subject of the action adverse to the other party, or to his testator, or intestate, can testify against such other party as to any transaction with, or statement by, the testator or intestate, unless called to testify thereto by the opposite party.

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 \$300 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 \$300 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.

Foreign Corporations. (See *Corporations, Foreign.*)

Foreign Judgments. (See *Limitations.*)

Fraud. (See *Statute of Frauds, and also Fraudulent Conveyances and Contracts.*)

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 encumbrancers 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.

Guarantee Companies. A guarantee, surety, or trust company or association which is, by the laws of the State in which it is organized, authorized to become surety on bonds or undertakings required by law, may become surety upon such bonds and undertakings in this State upon satisfying the secretary of State that it has sufficient resources to comply with the foreign corporation laws of the State. The secretary of State issues to such company a certificate authorizing it to do business, and naming the maximum sum for which it may become surety in this State.

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.*)

Injunctions. Injunctions may be granted in any of the following cases: 1. It shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission

or continuance of which, during the litigation, would produce injury to the plaintiff; or, 2. When, during the litigation, it shall appear that the defendant is doing, or threatens, or is about to do, or procuring or suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. 3. And when, during the pendency of an action, it shall appear by affidavit that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain such removal or disposition. When an injunction is issued before final hearing the applicant, as a rule, will be required to furnish a bond in an amount fixed by the judge.

Insolvency. (See *Assignments and Insolvency.*)

Insurance Companies. Foreign insurance companies, before they can legally transact business in this State, must comply with the provisions of the laws regarding the transaction of business by such companies. These provisions are quite stringent. A standard form of fire insurance policy is provided and is in use. The laws also provide for the organization of stock insurance companies and of county and township mutual insurance companies.

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 in the county where the judgment was recovered and in the counties to which it is transcribed, except the homestead for ten years from time such judgment is docketed in the clerk's office of the county where the judgment was entered and 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.

Jurisdictions. (See *Courts.*)

License. Commercial travelers are not required to take out a license. Peddlers and hawkers must procure license from the county auditor of each county in which they peddle and hawk. A license to marry must be secured from the clerk of the circuit court of the county in which the marriage is to be performed.

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 may have 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.

Mines and Mining. A condensation of the provision of the laws of mines and mining cannot well or safely be made, as the laws are voluminous and somewhat conflicting. Local counsel should be consulted.

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 collectible 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 or 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 mortgage 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.

Notaries. Notaries public have authority to administer oaths, take acknowledgments, protest notes, bills, or other instruments, and take depositions. They are required to have seals of office. Certificates which they are authorized to make by law require in this State no other authentication than the name official designation and seal of the notary public.

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. Notes given in whole or part for medical treatment or medicine must bear thereon endorsement stating that the note was given for medical treatment or medicine, and that the note is non-negotiable, and it is a misdemeanor to sell or dispose of such a note until all of the medical treatment or medicine for which the same was given has been furnished. Notes for lightning rods, patent rights, and premiums or assessments for mutual hail insurance must bear an endorsement in red ink across the face, showing the particular character of the consideration, and are non-negotiable.

Partnerships, Limited and Special. The provisions of the law regarding formation of special and limited partnerships are very voluminous, and cannot well be condensed. It is necessary that these provisions be strictly complied with, otherwise the special partner will be liable as a general partner. Among other things, a certificate of special partnership must be signed, stating, first, the name under which such partnership is to be conducted; second, the general nature of the business to be transacted; third, the names of all the partners and their residences, specifying which are general and which are special partners; fourth, the amount of capital which each special partner has contributed to the common stock, and, fifth, the period at which such partnership will begin and end. Duplicate certificates of this character must be acknowledged by all the partners, and one filed in the office of the clerk of the circuit court and the other recorded in the office of the registrar of deeds of the county in which the principal place of business of the partnership is situated. Copies of the certificate, duly certified by the registrar of deeds, must also be filed in the office of the clerk of the circuit court, and recorded in the office of the registrar of deeds, of every other county in which the partnership has a place of business. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

Powers of Attorney. A power of attorney to convey or mortgage real property must be acknowledged and recorded in the office of the registrar 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.*)

Records. Deeds and mortgages of real property must be duly acknowledged or approved to entitle them to be recorded. The recording of an instrument duly acknowledged or approved, is, in law, notice to all purchasers and encumbrances of the property subsequent to the recording. A deed or mortgage not recorded is void as against any subsequent purchaser or encumbrancer in good faith, and for a valuable consideration, whose conveyance is first duly recorded.

Redemption. A judgment debtor or his successor in interest or a creditor having a subsequent lien by mortgage or judgment may redeem from the sale of real property under execution or foreclosure within twelve months from the date of sale. Successive redemption may be made by creditors within sixty days after the preceding redemption. There is no right of redemption in the case of a sale of personal property.

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.

Revision. A law was passed at the session of the legislature which adjourned in March, 1901, providing for the appointment of a commission to revise and codify the laws. The revision was reported to and approved and adopted by the legislature in session in January, 1903, and went into effect July 1, 1903.

Service. Service of process may be made by a sheriff within his county, or any other person not a party of the action. It is made by

delivering to and leaving with the defendant personally a copy, or if he cannot conveniently be found, by leaving a copy with a member of his family over fourteen years of age at the residence. Service upon a corporation is made by delivering a copy to the president, secretary, cashier, treasurer, director, managing agent, or, in cases of railroads, the station agent. Non resident defendants can be served by publication, or personally, without the State, after securing an order for services by publication.

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. An inheritance tax law went into effect July 1, 1905. The tax depends upon the value of the property and the degree of relationship.

Testimony. (See *Evidence*.)

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.

Trust Companies. There are no special provisions of law regarding trust companies.

Warehouse Receipts. There are no special provisions of law regarding them, and they are governed by the provisions regarding deposit and storage. It is a criminal offense for a warehouseman to issue receipts for merchandise of any description which has not been actually received upon the premises of the warehouseman, and which is not under his actual control at the time of issuing the receipt.

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 a 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 subpoena, 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. A non-resident of Tennessee can not bring suit under the pauper's oath, but must give security for costs.

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 1891 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 fraudulently 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 chapter 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. Non-user 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 character, involving unliquidated damages. Justices of the peace have jurisdiction in equity up to \$50; on all unsettled accounts, obligations, contracts, etc., 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 subpoenaed. 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 deposited 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 subpoena 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 lifetime, 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 them equally. And if any such brother or sister died in the intestate's lifetime 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 brother- 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 three 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 1905, 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 under 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 lifetime 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 personality 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.

Prepared and Revised by MESSRS. MANN & BAKER, Attorneys at Law,
Galveston. (See Card in Attorneys' List.)

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 by purchase

or inheritance 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. (See Courts.)

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 garnished 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, that prohibited incorporating for state banks, has been amended and legislature of 1895 passed a banking act that authorizes incorporating in Texas, for banking and discounting powers and privileges, to which may be added trust company, surety company, fidelity and guaranty company powers and privileges, as defined in the act and with power to act as executor, administrator, guardian, receiver, assignee, trustee, depository, and other fiduciary relations as therein defined. The law also provides for savings banks which are not to have discount privileges, and also prohibits any banks other than national banks, incorporated out of Texas, to do business in the state, and requires private individuals doing a banking business, to use the word "unincorporated," and provides for penalties for any breach of any provision or the act. Also provides for supervision by state by inspection of all corporations under the act.

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

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 collateral. Surety on principal debt is subrogated to rights of creditor as to collateral. 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 separate 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. No special form required for a deed in Texas; any words of transfer conveys fee simple, unless a less estate is expressly limited. No warranty required, but any provisions of general warranty may be embodied by agreement. Conveyance of a greater estate than grantor has passes what he has. Estate *in futuro* can be made by deed or conveyance as well as by will. (See *Acknowledgments*.)

Corporations. The general Incorporation Law of Texas provides for organization of Texas corporations. The purposes for which they can be organized cover almost the entire range of business enterprise, the exception is corporations cannot be organized to acquire real estate for sale, except for sale and subdivision in towns, and their suburbs. (See *Foreign Corporations*.)

Costs. Bond or deposit for cost required on filing suit. Execution for costs may issue against the party incurring the cost at the close of each term.

Courts. The federal courts of Texas, are district courts with circuit court powers; there are four of these Districts in Texas and each holds two sessions of court a year, in from four to five places in each district designated by statute—Austin, Waco, San Antonio, El Paso, Del Rio, Dallas, Fort Worth, Abilene, San Angelo, and Galveston, Houston, Laredo, Brownsville, Victoria, and Tyler, Jefferson, Sherman, Paris, Beaumont, Texarkana. 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.

Creditors' Bills superseded in Texas by statutory proceeding of garnishment. (See *Garnishment*.)

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, after 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.

Deeds. (See *Conveyances*.)

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. Officer taking deposition must subpoena witness not less than five days before taking deposition, giving notice also to time and place of taking to each of the parties or their attorney of record, and written interrogatories must be propounded *seriatim* and witness not allowed to be advised of contents of interrogatory until so propounded. By written agreement filed in the cause, witness may be interrogated orally. 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.

Evidence. Parties can testify in their own behalf but not as to transactions with or statements by a deceased party. (See *Depositions*.)

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 milk-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.

Foreign Corporations, except railroads, can file their charter in office of secretary of State at Austin, Texas, and on payment of fee get a ten-year permit to do business in Texas. Foreign corporations doing a strictly interstate and commerce business in Texas do not have to file charter or get permit. (See *Corporations*.)

Foreign Judgments can be sued on in Texas.

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. No contract can be enforced for or growing out of future contracts where there was no intention of actual delivery of the article.

Garnishment. (See *Attachments*.)

Guaranty Companies must have at least \$100,000 paid-up capital, must deposit at least \$100,000 with some state officer in some State of the United States, must deposit \$50,000 good securities with treasurer of State of Texas, must designate to commissioner of insurance of Texas some one on whom service of legal process can be made, can make statutory bonds in Texas.

Holidays. January 1st, February 23d, March 2d, April 1st, June 3d, 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 necessities 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.

Injunctions, statute as to, is almost entirely declaratory of equity rules and practice.

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 33 1/3 per cent to all accepting creditors. As a general assignment is an act of bankruptcy, the bankrupt act has practically done away with the State assignment law.

Insurance Companies. Apply to commissioner of insurance for copy of the law, as it can not be condensed.

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.

Jurisdiction. (See *Administration of Estates, Courts, Divorce, Notes and Bills of Exchange.*)

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 necessities 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.

Mines and Mining. There are statutory provisions as to mineral lands of the State, but too lengthy for this compendium.

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.

Notaries appointed by the governor and approved by senate; hold office for two years and have seal of office.

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 preced-

ing such holiday. When third day of grace falls on Sunday or a legal holiday, the paper is due on the preceding day.

Partnerships, Limited. Statutory provisions for record of certificate by which the special partner is limited in his liability to the capital named as amount to be contributed.

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.

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

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. No legal advantage in protesting negotiable paper where there is no one secondarily liable.

Records. Deeds, mortgages, and other liens must be recorded. (See *Acknowledgments, Chattel Mortgages.*)

Redemption. None allowed as against forced sales.

Service. Citations must be served ten days before first day of term of court to require appearance and answer to that term.

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.

Testimony. (See *Depositions.*)

Transfer of Corporation Stocks. Such stock is transferable only on the books of the corporation in such manner as the by-laws may direct.

Trust Companies not allowed banking privileges; can act as trustees, executors, and agents.

Warehouse Receipts. Receipts of public warehouses negotiable by statute, and title to the cotton, grain, or other product passes by the receipt.

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, Attorneys at Law, Salt Lake City. (See *Card in Attorneys' List.*)

Accounts. Are proven as at common law. There is no statute making an affidavit, attached to an account, *prima facie* evidence of its correctness.

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 concerning 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 there is reason to believe that an impartial trial can not be had therein. 2. 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 property 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.

Arbitration. The code of civil procedure provides that any controversy, except a question of title to real property, may be submitted to arbitration and prescribes the procedure. The award is entered as a judgment in the district court. In practice resort to the statutory method of arbitration is unknown, however.

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 employes 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 \$300 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 Exchange. (See *Notes and Bills of Exchange.*)

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 mortgagee 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 must 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 after 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.

Collateral. There are no statutory provisions peculiar to this subject.

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.

Contracts. A statute provides that contracts by telegraph are deemed written. The power to contract inheres in the same persons substantially as in common law, except that married women may contract as if sole. (See *Statute of Frauds*.)

Conveyances. (See *Deeds*.)

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, city 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 four 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 city courts and 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 \$300, 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 \$300 or imprisonment not exceeding

six months in the county jail, or both, and are examining and committing magistrates for violation of State laws. City courts in cities have civil jurisdiction in actions arising on contract, and in some cases sounding in tort, such as, in replevin, for injury to the person or to personal property, or for taking or detaining personal property, or injury to real property where no issue of title involved up to \$500. Questions which involve the title to realty or the legality of a tax, impost, toll, or municipal fine cannot be tried in the city courts. They have jurisdiction of offenses by reason of the violation of city ordinances and the same power and jurisdiction as justices of the peace in criminal cases and as magistrates. Appeals lie to the district court from final judgments, and in such cases from the judgments of the district court to the supreme court where the judgment of the district court exceeds \$100.

Creditors' Bills by that name are abolished by the code of civil procedure, but the same remedies are obtainable in a civil action under the code.

Days of Grace are abolished by statute. (See *Notes and Bills*.)

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 warranty and of quit claim 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 may also be taken upon oral interrogatories and answers upon written notice to the adverse party, specifying the time and place of taking such depositions; also the name and official character of the person before whom such depositions are to be taken, and the names of the witnesses to be examined. Said notice must be served at least ten days previous to the day of taking such depositions, with one day added for each two hundred miles intervening between place of trial and place of taking depositions.

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. A substitute is found in the provisions for enforcing landlords' liens. (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 necessities 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. (See *Succession*.)

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 \$300; crops, whether growing or harvested, and the proceeds thereof, not exceeding in value \$200. 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 thirty days next preceding the levy of execution; provided, that when the earnings are \$2 a day or less, such married man or head of family shall be entitled to an exemption of \$30 per month; provided, that in no case shall the judgment debtor be taxed with the costs of any proceeding to obtain by levy of execution or otherwise, any part of the earnings of such judgment debtor, for personal services rendered within thirty days next preceding the levy of such execution. 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.*)

Foreign Corporations. (See *Corporations, Foreign.*)

Foreign Judgments. There are no statutory provisions having special relation to foreign judgments, except one providing that the statute of limitations within which a suit can be brought upon a foreign judgment is eight years.

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.

Guaranty Companies. Chapter 6 of the title on corporations provides for the organization of loan, trust, and guaranty associations. Such corporations have power to insure titles, act as assignees, receivers, executors, administrators, and guardians, to become sole surety in cases where the law otherwise requires more than one. May buy, sell, or mortgage real estate, loan money on real estate security, receive deposits of money, pay an agreed rate of interest thereon, provided if they receive commercial or savings deposits they are then governed by the law relating to banking corporations in that respect. May become surety in all legal proceedings where bonds or undertakings are required. (See *Corporations.*)

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.*)

Injunctions. Are granted on substantially the same principles that govern their issue under the old chancery practice, in the exercise of the equity powers of the district court under the code procedure. May be issued and served on Sunday or other legal holidays.

Insurance Companies. A foreign company must appoint an attorney in this State, and file with the secretary of State a writing showing his authority to acknowledge service of process, with a certified copy of its charter or articles of incorporation, and a sworn statement of the president and secretary showing the facts required in the annual statement of domestic insurance companies, and showing that the company has deposited in some State or Territory a sum not less than \$200,000 for the security of the insured, and file also a copy of its last annual report, under the law of the State of its incorporation. Must procure a certificate of authority from the secretary of State to do business. Doing business without such authority incurs a penalty of \$35 a day for each day's neglect to procure such certificate.

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 eight 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 employes 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 employes 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.

Mines and Mining. The general principles of the system of mining laws which prevails in the Pacific Coast region, as embodied in the Revised Statutes of the United States, and interpreted by the supreme court of the United States and other federal courts, obtains in this State. There is very little local statutory enactment to supplement this general system. The statute provides that the locator of a mining claim must erect a monument at the place of discovery and post thereon his notice of location containing the name of the claim, of the locator, and the date of the location. If a lode claim, the notice must state the number of linear feet claimed in length along the course of the vein each way from point of discovery, the width on each side and the general course of the vein or lode as nearly as may be, and such a description must be located by reference to some natural object or permanent monument such as will identify the claim. If a placer or mill-site claim the notice must state the number of acres of superficial feet claimed, and such a description of the claim or mill-site located by reference to some natural object or permanent monument such as will identify the claim or mill-site. Claims must be distinctly marked on the ground so that the boundaries can be readily traced. Within thirty days after posting the location notice a copy must be filed with the county recorder, if the claim is outside of a mining district. If within an organized district, a copy must be filed with the mining recorder of the district and a duplicate certified by him mailed for filing to the county recorder. The notice is recorded by the mining recorder and the county recorder. Either record is an original entry and a certified copy admissible in evidence in the courts. All existing districts (March, 1899) are recognized, and new mining districts may be organized in accordance with the laws of the United States governing, provided the nearest boundary line of any district shall be not less than ten miles from the county recorder's office of any county. It is the duty of each recorder to record the mining rules and regulations of the several districts, and to record, index, and abstract the mining location notices. The owner of a lode or placer claim performing the annual labor required by the laws of the United States to prevent forfeiture of his claim, must within thirty days after the completion of the work file with the county recorder in which the greater part of the mining district is situated in which the claim is located, his affidavit, or that of the person or persons who performed the work for him, showing: 1, Name and situation of the claim; 2, number of days work done, character and value of improvements made; 3, date of performance and number of cubic feet of earth or rock removed; 4, at whose instance done; 5, actual amount paid for the labor and by whom, when not done by the owner. A duplicate must be filed with the mining recorder of the district. Such affidavits or duly certified copies are prima facie evidence of the facts recited. A state coal mine inspector supervises the coal mines of the State. Elaborate provisions are made for regulating and inspecting coal mines and a synopsis of these is impracticable in a brief space.

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. A short statutory form is provided.

Notaries Public are appointed for four years. They are required to keep a record of protests made. The seal must contain the name of the county and State, and the words "notary public" or "notarial seal" with the name of the notary, and the notary must affix to acknowledgments taken and certified the date when commission expires.

Notes and Bills of Exchange are governed by statute. Chapter 88 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 *Holidays.*)

Partnerships Limited. May be formed to engage in mining, mercantile, mechanical, or manufacturing business, but not in banking or insurance. There must be at least one general partner. Special partners are not liable for debts beyond the fund contributed by them to the capital stock. To form such a partnership a certificate containing the name, the general nature of the business, names and residences of all general and special partners distinguishing each, the amount of capital contributed by each special partner, the period when it commences and terminates, must be acknowledged, and recorded with the county recorder in each county where the partnership has a place of business. An affidavit must be filed with certificate showing that the capital has been paid in full. The terms of the partnership when recorded must forthwith be published four consecutive weeks in a newspaper designated by the county recorder. Renewals are shown by similar certificates, acknowledged, authenticated, filed, and recorded in the same manner. A special partner by transacting the ordinary business of the partnership or interfering therewith becomes a general partner. No dissolutions except by consent of creditors shall take

place previous to the time specified, until notice thereof has been filed and recorded and published as required for the original certificate.

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.

Probate Law. (See *Administration of Decedents' Estates, Claims against Estates of Deceased Persons, Court.*)

Protest. (See *Notes and Bills of Exchange.*) No days of grace.

Records. Every instrument in writing affecting real estate executed acknowledged as required by law, and every patent to lands executed and verified according to law, and every judgment, order, or decree of any court of record affecting real estate shall from the time of filing with the county recorder impart notice to all persons, to subsequent purchasers, mortgagees, and lien holders. Conveyances of real estate not so recorded shall be void against any subsequent purchaser in good faith for valuable consideration where his own conveyance shall be first recorded. Recording an assignment of mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or representatives, so as invalidate any payment made by him or them to the mortgagee. A mortgage or trust deed to secure a debt may be discharged by an entry on the margin of the record attested by the recorder with the same effect as a deed of release duly acknowledged and recorded. A mortgagee failing to discharge or release a mortgage after its full satisfaction shall be liable to the mortgagor for double damages resulting.

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 term 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.

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

Trust Companies. (See *Corporations, Guaranty Companies.*)

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.

Warehouse Receipts. There are no statutory provisions specially applicable.

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. 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 WILLIAM N. THERIAULT, Esq., Attorney at Law, Montpelier.

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.

Actions. Are such as are recognized by the common law. Suits before a justice must be served at least six days and not more than sixty days before the return day, except when served in another county, then at least twelve days prior to return day; if defendant is properly notified, judgment may be rendered on the return day, if no defense is interposed. If there is no personal service there must be one continuance for notice. Suits before a justice must ordinarily be brought in the town where one of the parties resides; if neither lives in the State, then in any town. Suits before the Supreme or County Courts must be brought in the county in which one of the parties resides, if either lives in the State; if neither resides in the State, then in any county, but actions of ejectment and trespass on the freehold must be brought in the county where the land lies. Replevin is to be brought in the county where the goods are detained. Every writ and process returnable before the supreme or county courts, except as otherwise provided, shall be served within twenty-one days from the date of issuing the same, including the day of service, and excluding the day of issuing. The party suing out any process shall cause the same to be entered and docketed in the county clerk's office on or before the expiration of said twenty-one days, or the process shall be of no avail. The defendant shall cause his appearance therein to be entered with the clerk within forty-two days from the date of process. Process served by an officer shall be returned by him to the court or judge to which, or the place where, it is made returnable, within the time allowed by law for serving the same. Suits are commenced by writs of summons or attachment, as the plaintiff prefers. There is no distinction between residents and non-residents, either plaintiff or defendant, in respect to the right of, or liability to, an attachment of property on mesne process. The declaration is contained in the writ. Security for costs to the defendants must be given by way of recognizance by some other person than the plaintiff and must be minuted upon every writ.

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 80 per cent of the assets shall be invested in real estate mortgages; and not more than 60 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 above 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. No savings bank, savings institution or trust company shall loan to any one person, firm or corporation, or the individual members thereof, more than 5 per cent of its deposits, nor more than \$30,000; nor shall such loans on personal security exceed \$10,000, until its deposits amount to \$1,000,000, after which the sums so loaned may be increased 1 per cent of the deposits in excess of the \$1,000,000; but this section shall not apply to United States bonds or municipal bonds, or notes with such bonds as collateral. No loan shall be made to an officer, director or employe of any trust company, without the written consent of a majority of the directors, and such loan shall not at any time, directly or indirectly, exceed 5 per cent of the capital stock actually paid in, but the discount of bona fide bills of exchange drawn against existing values and the discount of commercial or business paper actually owned by such director, officer or employe, negotiating the same to an amount not exceeding \$10,000, shall not be prohibited. No loan shall be made by such corporation upon its own stock as collateral. The words "trust company" in this chapter shall be construed to include savings banks and trust companies. A savings bank, savings institution or trust company may deposit on call in banks, banking associations or trust companies in this State or in the cities of New York, Boston, Chicago, Albany, Philadelphia or Concord, New Hampshire, or in any other legal, designated depository under the laws of the United States, or in national banks in the cities of St. Paul, Minneapolis and Kansas City, with or without interest, as may be agreed upon, sums not exceeding in the aggregate 20 per cent of the assets of such savings bank, savings institution or trust company. A savings bank, savings institution or trust company may hold real estate acquired by the foreclosure of a mortgage thereon, owned by or pledged to such corporation, or by purchase at sales made under the provisions of such mortgage, or upon judgments for debts due, or in settlements effected to secure such debts; and such real estate shall be sold by such corporation as soon as a reasonable price can be obtained therefor, and within five years after the same is vested in such corporation, excepting when a majority of the trustees or directors of such corporation shall make application in writing to the inspector of finance stating that in their opinion the interests of such corporation require that such real estate be held for a longer period than five years, in which event the inspector of finance may extend the time of holding such real estate not to exceed three years, and the inspector of finance may at any time, by a written order, directed and delivered to the treasurer of such corporation at least ninety days prior to the time limited, order the sale of any such real estate as he may designate. The trustees of a savings bank or savings institution shall regulate the rate of interest or dividends, not to exceed 1½ per cent semi-annually upon the deposits therewith, in such manner

that depositors shall receive as nearly as may be, the profits of such corporations, after deducting necessary expenses, and reserving such amount as the trustees deem expedient as a surplus fund for the security of depositors, which, to the amount of 10 per cent of their deposits, the trustees of such corporation may gradually accumulate and hold to meet any contingency or loss in its business from the depreciation of its securities or otherwise; but the trustees may classify the depositors according to the character, amount and duration of their dealings with the corporation, and regulate the interest or dividends allowed, so that each depositor shall receive the same ratable proportion of interest or dividends as others of his class.

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

Chattel Mortgages. All personal property is subject to mortgage. Mortgage must be recorded in the office of the clerk of the town in which the mortgagor resides at the time of the making of the same, or if he resides out of the State, in the town in which the property is situated, or possession changed to be valid. Mortgagor and mortgagee are required to subscribe to an affidavit that the debt secured is a just one and if such a mortgage is given to indemnify the mortgagee against liability assumed, or to secure the fulfillment of an agreement other than the payment of a debt due from the mortgagor to the mortgagee, or if such mortgage is given to a trustee to secure bonds issued or to be issued thereunder, such liability, agreement or obligation shall be stated specifically in the condition of the mortgage, and the affidavit shall be so varied as to verify the validity and justice of such liability, agreement or obligation.

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. Not less than twenty-five persons, a majority being inhabitants of the State, may form a railroad corporation under the general law. Any corporation, by a vote of all its stockholders at a meeting duly called for the purpose, may alter, add to or change the business for the transaction of which it was incorporated. Charter fees—If incorporated by act of Legislature and no capital stock is provided for, or if capital stock does not exceed \$10,000, \$25; if capital stock exceeds \$10,000 but does not exceed \$50,000, \$50; if exceeds \$50,000 but does not exceed \$200,000, \$100; if exceeds \$200,000 but does not exceed \$500,000, \$200; if exceeds \$500,000 but does not exceed \$1,000,000, \$300; if exceeds \$1,000,000, \$500; if incorporated by voluntary association and no capital stock is provided for, \$25; if capital stock does not exceed \$5,000, \$10; if exceeds \$5,000 and is not over \$10,000, \$25; if exceeds \$10,000 and is not over \$50,000, \$50; if exceeds \$50,000 and does not exceed \$200,000, \$100; if exceeds \$200,000 but does not exceed \$500,000, \$200; if exceeds \$500,000 but does not exceed \$1,000,000, \$300; if exceeds \$1,000,000, \$500. Charter fee must be paid with application for charter, and if charter is refused money is refunded.

Courts. The supreme court has appellate jurisdiction, and sits as a court of error 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 warrantum*; 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 \$20 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 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, live 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*.)

Husband and Wife are competent witnesses for or against each other in all cases, civil and criminal, except that neither is allowed to testify against the other as to any statement, conversation, letter or other

communication made to the other as to another person, and neither is allowed in any case to testify as to any matter which, in the opinion of the court, would lead to a violation of marital confidence.

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. (*See Husband and Wife.*)

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. Bills of exchange, drafts, promissory notes, and other contracts falling due on Saturday shall for every purpose be considered as due on the next following business day, except that such 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 legal holiday, and in case of the dishonor before twelve o'clock noon on Saturday, of any bill, draft, note, or other contract, payable on demand, notice of such dishonor as provided by law may be given at any time before the close of the next following business day, by a notary public to a party to such instrument, and such notice shall be sufficient to charge a party to such instrument.

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 at the request and in the presence of the testator and in the presence of 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. If this affidavit be not made by plaintiff, it should be made by some one cognizant of the facts and describing himself as "agent for" plaintiff—not "book-keeper."

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 fol-

lowing 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 Anno Domini" 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 the 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. When account is taken before notary, he must state in certificate date of expiration of commission.

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 his death, or 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, or in any county or corporation wherein he may be found and served with process. 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. Assumpsit may be maintained when covenant will lie.

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 Distribution.*) 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 circuit or corporation court. 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, if matter in controversy exceeds \$300. 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 State corporation commission has the power to charter banks under the general corporation law.

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.

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.

There are no laws restricting savings banks as to the class of bonds and securities in which their funds may be invested.

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

Bills of Lading. Every company doing business in this State as a common carrier is required, at the time it delivers any articles shipped over its line, to furnish to the owner or consignee thereof, or to his agent, a bill plainly stating the class of freight to which said articles belong, the weight thereof, and the rate charged for transporting the same. Failure to comply with this law deprives the company of the right to receive anything for the transportation, and forfeits to the owner or consignee three times the amount of the charges for such transportation; and a fine is imposed for receiving said charges without furnishing such bill.

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. It is larceny to dispose of personal property on which a deed of trust exists, without the consent of the trustee or beneficiary.

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. The death of the drawer of a check, presented within two weeks from date of death, does not operate as a revocation. Bank or bankers retain for a period of one month after notice of the death of a depositor money standing to his credit, and after paying thereon any checks which may be presented within said two weeks shall, upon demand, pay the residue to the persons entitled thereto in the manner prescribed by law. This applies only to checks made payable at a bank or bankers. (Acts 1906.)

Collaterals. No special legislation.

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, or 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 before an officer authorized to take acknowledgments. (See *Acknowledgments.*) His official character and when his commission expires 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. The State corporation commission, consisting of three members, is the department of government through which must be issued all charters and amendments or executions for domestic corporations, and all licenses to do business in this state to foreign corporations; and through which must be carried out all provisions for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. The legislature is prohibited from passing any special act to regulate the affairs of or to give any special rights, powers or privileges to any corporation. Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, except a railroad, telegraph, telephone, canal, turnpike or other company which shall need to possess the right of eminent domain. Subscriptions to capital stock may be paid in money, or other property, real or personal rights, assessments, services, etc. No individual liability beyond the obligation to comply with terms agreed to in contract of subscription. Corporation may adopt such plan of financial organization and may dispose of its stock or bonds for the purposes of its incorporation at such prices, for such consideration, and on such terms and conditions as it sees fit; provided that before making any issue it shall file before the State corporation commission a verified statement setting forth fully the financial plan upon which such stocks and bonds are to be issued. 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.

Costs. Non-resident plaintiffs may be required to give security for costs on motion of defendant to any officer of the court.

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.—There are *twenty-nine* circuit courts, presided over by as many judges, having jurisdiction of all matter of law and equity where the amount exceeds \$20.00. 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. 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 court (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.

Deeds. (See *Conveyances, and Chattel Mortgages and Deeds of Trust.*)

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, except depositions in divorce proceedings, which the statute requires shall be taken in all cases before 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 parenarchy 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 of divorce a vinculo matrimonii, which supervene after marriage, are 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.

Evidence. Parties may testify in their own behalf. Husband and wife may testify for or against each other in civil cases, except in proceeding by a creditor to impeach any conveyance from the one to the other on the ground of fraud or want of consideration. Where one of the parties to a transaction is dead or incapable of testifying, the other party suing is incompetent, unless first called by the adverse party, or unless someone who was personally concerned in the transaction survives and is able to testify.

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. Waiver, to be effectual, must be in writing.

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.

Foreign Judgments. Action may be brought upon a judgment or decree of another State or country, unless barred by the laws of such State or country; but must be brought within ten years, if against a citizen who has resided ten years in this State.

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 or of 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.

Guaranty Companies. Every guaranty, trust, indemnity, or other like company with a paid-up cash capital of not less than \$250,000, which has complied with the laws of this State, may be accepted as surety upon the bond of any person or corporation required by the laws of the State, or by any judge or court officer, etc., upon production of evidence of solvency and credit, satisfactory to the court or judge, or other officer, etc., authorized to approve such bond. Every such company must furnish the State treasurer with a sworn statement of the amount of its capital stock, and deposit with him bonds to an amount equal to five per centum on its capital stock, provided that the cash value of the securities so deposited need not be more than \$25,000, nor less than \$12,500. Foreign companies must appoint a citizen of the State, residing in Richmond, as agent upon whom process, etc., may be served.

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.

Injunctions. Injunctions may be granted by the judges of the circuit or corporation courts, upon a verified bill, whether the proceedings enjoined be within or without their circuit or corporation. If refused by such judge, may be granted by the judges of the supreme court of appeals.

Insolvency. There is no insolvency law in this State.

Insurance Companies. By act of Assembly approved March 9, 1906, a bureau of insurance was established within the department and subject to the supervision and control of the State corporation commission, which is charged with the execution, under said commission, of all laws relative to insurance, and to insurance guaranty, trust indemnity, fidelity and security companies, of every character, and fraternal and other beneficial orders and societies. All such companies, associations, etc., domestic, foreign or alien, are placed under the bureau of insurance, and are subject to the inspection and supervision of the State corporation commission through the said bureau.

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. Corporations cannot plead usury.

Judgments are liens on real estate possessed by debtor at or after the date of judgment, but no judgment shall be a lien on real estate as against a purchaser thereof for valuable consideration without notice until and except from the time that it is duly docketed in the clerk's office of the county or corporation wherein such real estate may be. The liens of judgment against the same person attach in the order of their dates, but where several judgments are rendered against the same person at the same term of the court, if the suits were on the docket at the commencement of the term, there shall be no priority among them, but are to be paid ratably. Such judgments take priority over judgments confessed during the term. (Acts 1901-02.)

Jurisdiction. (See *Actions and Courts.*)

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.*)

Mechanics' 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 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.

Mines and Mining. Employees of a mining company are given a prior lien by statute.

Mortgages in general have been superseded by deeds of trust. 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. (See also *Chattel Mortgages and Deeds of Trust.*)

Motions. Any person entitled to recover money by action on any contract, may on motion before any court that would have jurisdiction, obtain judgment after fifteen days notice, which shall be returned to the clerk's office of such court within five days after service of same, and after fifteen days service the notice shall be docketed, and if the plaintiff file with his notice an affidavit made by himself or his agent stating to the best of his belief the amount of claim, that such amount is due, and the time from which interest is claimed, judgment shall be entered by the court for plaintiff, unless defendant denies the same under oath.

Notaries. (See *Acknowledgments.*)

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, are January 1st, January 19th (Lee-Jackson), February 22d, May 30th (Confederate Memorial Day), July 4th, first Monday in September (Labor Day), the Tuesday next following the first Monday in November (known as Election Day), December 25th, every Saturday from 12 o'clock noon 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. All days now or hereafter designated or established as public holidays in this State, and the entire day of every Saturday shall, for all purposes whatsoever as regards the maturity, the presenting for acceptance or payment and of protesting and giving notice of the dishonor of any bill of exchange, draft, check, negotiable note, or other negotiable instrument, made on or after the day on which this act shall take effect, constitute and shall be considered and treated as public holidays, and as non-secular and non-business days, and shall be so considered and construed within the meaning of the act of the general assembly approved on the third day of March, eighteen hundred and ninety-eight, known as the negotiable instrument law; and every such bill of exchange, draft, check, negotiable note or other negotiable instrument which would otherwise be presentable for acceptance or payment on any of the said holidays or Saturdays or on a Sunday, shall be deemed to be presentable for acceptance or payment on the next succeeding secular or business day. And no person, firm, corporation, association or company shall be deemed guilty of any neglect or omission of duty, nor incur any liability in not presenting for acceptance or payment, or in not collecting, or in not protesting, or in not giving notice of non-acceptance, non-payment or dishonor of any instrument, whether negotiable or non-negotiable, made on or after the day on which this act shall take effect on any of the said public holidays, or on any Saturday or Sunday; provided, however, that notice of the non-acceptance, non-payment, dishonor or protest of any such instrument as is hereinbefore specified may be given on any such holiday, Saturday or Sunday with the same effect as if it were a secular or business day. (Acts 1906.) 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.)

Partnerships, Limited and Special. Special partners are not personally liable for any debts of the copartnership provided the terms of the act are strictly complied with. Special partners must not transact any business for the firm, as agent or otherwise, but may examine into the state of the business and advise as to its contents.

Partnership Associations. Three or more persons may form a partnership association by complying with the provisions of the Code (Secs. 2878-2886). The word "limited" must be added as a part of the name of the association. The capital is alone liable for the debts of the association, when all the capital stock subscribed has been paid in, which may be in money, or in real or personal estate, at a reasonable valuation to be approved by all the members subscribing thereto.

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.

Redemption. There are no statutory provisions regulating the redemption of estates; but the equity of redemption exists in the mortgagor in a mortgage, and in the grantor in a deed of trust.

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 prior 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.)

Testimony. (See *Depositions and Evidence.*)

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.

Trust Companies. (See *Guaranty Companies.*)

Warehouse Receipts. Warehouse or other storage receipts, with the word "negotiable" plainly written or stamped on the face thereof, may be issued by any person keeping a licensed warehouse or other licensed place of storage in this State, which are transferable by indorsement and delivery. Whether the property specified in such receipt be owned by the person issuing the same, or another; and any person to whom such receipt is so endorsed and delivered, shall be deemed the owner of the property specified therein, so far as may be necessary to give effect to any sale to such person, or to any pledge or lien for his benefit, created or secured by such transfer, whether the receipt and endorsement be admitted to record or not, subject, however, to storage and other charges of the person keeping such place of storage. A duplicate receipt must show on its face the reason for the issuance of the same, stating whether original was lost, burned, or stolen.

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. 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 wherein he dies, or a county or corporation wherein he has estate. It shall be the duty of the personal representative of the testator to cause a duly certified copy of any will, or of any authenticated copy so admitted to record to be recorded, in the clerk's office of the county or corporation court of each county or corporation, wherein there is any real estate whereof the testator died seized and possessed.

SYNOPSIS OF THE LAWS OF WASHINGTON

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by MARK F. MENDENHALL, Attorney at Law, Spokane. (See Card in Attorneys' List.)

Accounts. An action for a balance due upon an open, mutual and current account between the parties shall be deemed to accrue from the date of the last item proved in the account on either side; but when a period of more than one year shall have elapsed between any two successive items or demands, they are not parts of such accounts.

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 a court 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 notary public (Laws, 1901), 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____.

Residing at _____, Notary Public.
_____ Washington.

Certificates of acknowledgment of an instrument acknowledged by a corporation substantially in the following form shall be sufficient:

State of _____ } ss.
County of _____, } On this _____ day of _____, A. D. 190____, before me personally appeared _____ to me known to be the (president, secretary, treasurer, or other authorized officer or agent, as the case may be), of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature and title of officer.)

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 counterclaim or offset, if held by him against the original owner, against the debt assigned, save that no counterclaim 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. The guardian of an imbecile, insane person, or minor, may compromise any cause of action against his ward by and with the advice of the court. Summons or notice and complaint issued out of a justice court may be served by any citizen of the State of Washington over the age of twenty-one years, and not a party to the action.

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 probate 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. Wages due for labor performed within 90 days immediately preceding the death of decedent. 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.

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.

All shares of stock in banks, existing by authority of the United States or of the State, and located within the State, shall be assessed to the owners thereof in the cities or towns where such banks are located, and not elsewhere, in the assessment of all State, county, and municipal taxes imposed and levied in such place, whether such owner is a resident of said place or not; such shares shall be assessed at their full and fair value on March 1, in each year, after deducting from the capital of said bank the actual portion thereof invested in real estate, which real estate shall be assessed and taxed as other real estate is assessed and taxed, but such value shall not exceed the paid-up capital, surplus, and undivided profits as shown by the books of the banks. And persons or corporations who appear from the records of the banks to be the owners of shares at the close of the business day next preceding the first day of March in each year, shall be taken and deemed to be the owners thereof for the purposes of this section.

Checks, Drafts, Fraud. Drawing checks or drafts on a bank with intent to defraud when the drawer has not sufficient funds or credit at the bank is a felony. Penalty, one to five years in the penitentiary, or any length of time not to exceed one year in the county jail. (Laws, 1905.)

Foreign Banks. Foreign banks or bankers commencing a banking business in the State after January 1, 1905, may loan money and buy and sell exchange, but shall not receive deposits either directly or indirectly. Every foreign bank shall maintain at its office in this State a capital not less in amount than that required for a national bank at the same place, and shall pay taxes on such capital, and shall not advertise in any manner a larger capital or surplus than that maintained in the State. Penalty for violation \$1,000. (Laws, 1905; p. 55.)

Bills of Exchange. (Governed by general negotiable instruments law.)

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 commodity, 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*.)

Collateral. Collaterals may be foreclosed by suit in equity; but where the collateral note provides for notice and summary sale, the collateral may be placed in the hands of the sheriff, who will post notices for ten days, and sell the same at auction.

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. (See *Husband and Wife*.)

Conditional Sales shall be absolute as to purchasers, incumbancers, and subsequent creditors in good faith, unless within ten days from taking possession by the vendee, a memorandum of the transaction be filed in the auditor's office of the county wherein the vendee resides. The auditor shall file such memorandums, and enter same in a book with an alphabetical index, used exclusively for that purpose, ruled into separate columns with appropriate heads, "Time of Filing," "Name of Vendor," "Name of Vendee," "Date of Instrument," "Amount of Purchase Price," and "Date of Release."

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. (See *Acknowledgments and Community Property*.)

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; 5, to define their powers, prescribe their duties and fix their compensation; 6, 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 employees. Penalties, \$100 to \$1,000, or imprisonment from ninety days to one year, or both fine and imprisonment. Corporations may subscribe for, buy, sell, and vote shares in any other corporation. (Laws, 1905; p. 51.)

(See *Foreign Corporations and Transfer of Stock*.)

The secretary of State shall refuse to file the articles of incorporation for any persons seeking to incorporate under the name of some other corporation of this State, or some foreign corporation having complied with the laws of this State, or any name so nearly resembling the name of such other corporation as to be misleading.

Any superintendent, director, manager, or other officer of any corporation formed or doing business in this State who shall publish or consent to the publication, either generally or privately, to the stockholders or to other persons dealing with such corporation, any wilfully untrue, or fraudulently exaggerated report, prospectus, account values, profits, etc., or other document intended to give a greater value to the shares of the corporation than they possess, with a view to defrauding particular persons, or the public generally, shall be deemed guilty of an offense against the laws of the State, and upon conviction, shall be punished by imprisonment in the penitentiary for not less than one or more than five years, or in the county jail not more than one year, or by a fine not exceeding \$2,000, or by both.

Costs. Costs are awarded to the prevailing party, including the witnesses and depositions, etc., and attorney's fees as follows: If the case goes to the jury, \$15.00; dismissal without evidence taken, \$5.00; cases tried before the court, and other cases, \$10.00. Jury fee of \$12.00 is now required as a prerequisite of going to trial. If not so deposited, jury trial is waived and case is tried by the court.

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. Garnishment in justice courts. The garnishee in any garnishment proceeding before a justice of the peace, may, instead of personally appearing before said justice and submitting to an examination by him, answer the affidavit and writ, in writing, signed and verified by the garnishee, and such answer shall be filed within the time required by the writ for the garnishee to appear.

Creditors' Bills. No legislation. Courts of equity have general jurisdiction.

Days of Grace are abolished by Negotiable Instruments Law.

Deeds. (See *Conveyances*.)

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 by applying on petition to the court for an order upon witness to attend, and for punishment for contempt or refusal to comply. (See *Evidence*.)

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. (See *Community Property and Inheritance Tax*.)

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*.)

Evidence. Evidence may be perpetuated by applying by petition, to the court, and the granting of an order naming a commissioner, fixing a time and place for witnesses to attend, and after depositions are taken, same shall be filed in the office of the clerk of the court issuing the commission. Certified copies of all the records and documents on file in all

the public offices in the United States, and this State, shall be admitted in evidence. Foreign statutes may be admitted when they purport to have been published by authority. Either party to the action may apply to the court for an order, compelling the other party to give an inspection and copy of any book, document or paper in his possession, or under his control, containing evidence relating to the merits of the action or defense. If the order is disobeyed, the court may exclude such book or document, and may punish for contempt.

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 household, being the head of a family, a homestead to the value of \$1,000, if selected any time before sale, also household goods to value of \$500, and 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 fire 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. Except when the debt is for actual necessities furnished to debtor's family, then wages to the amount of \$10.00 per week for four consecutive weeks shall be exempt. 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, laborer's, or mechanic's wages earned within this State, nor for actual necessities not exceeding \$50.00 in value or amount furnished to the defendant or his family within sixty days preceding the beginning of an action to recover therefor, or from execution issued on a judgment against an attorney or agent for money belonging to client or principal.

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. (See *Checks, Drafts*.)

Foreign Corporations. Before doing business in the State, a foreign corporation must file with the secretary of State a copy of its charter or articles of incorporation, or certificate of incorporation, certified to by the custodian of the same in the State or country of its domicile; also a certificate executed under its corporate seal, appointing a resident of the State, giving his name and address, as agent of the corporation, upon whom service of process can be made. No corporation, the majority of whose capital stock is owned by aliens, can acquire the ownership of any lands in the State, except lands containing valuable deposits of minerals, and necessary lands for mills and machinery to work said products, except lands acquired under mortgage, or in good faith in the ordinary course of justice in the collection of debts. Any agent of such corporation carrying on business contrary to the statutes, shall be guilty of misdemeanor, and upon conviction, may be punished by a fine not exceeding \$200, or by imprisonment not exceeding three months, or by both fine and imprisonment.

Foreign Judgments. Foreign judgments are of no higher character as evidence of indebtedness than the original claim upon which rendered, unless such judgment shall be rendered upon personal service or other due process against the defendant. The judgment debtor may set up the same defense on such judgment rendered without such personal service, as he might have made in the original proceeding.

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.

Guaranty and Surety Companies. Before doing business in this State, such company shall file a copy of their articles or charter with the Insurance Commissioner and certificate showing that said corporation has net assets, or paid up unimpaired capital of not less than \$350,000, and the appointment of an agent upon whom service for foreign surety companies can be made, to be filed with the Insurance Commissioner. It is a misdemeanor to do business without such prerequisites, punishable with a fine not less than \$100, nor more than \$500. Fees to be paid to the Insurance Commissioner for filing articles of incorporation or certified copy thereof, \$25; issuing certificate of authority to do business, \$10; for each annual renewal certificate, \$10. Bonds executed by duly authorized companies are acceptable in all judicial proceedings, and the costs for such bond to be taxed as costs in the case.

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. (*See Community Property and Married Women.*)

Inheritance Tax. All property within the State which shall pass by will or inheritance, or by deed, grant or gift intended to take effect after death, shall be subject to an inheritance tax on the value of said estate, over and above all just debts and fees, which tax shall be a lien on said real estate. In determining the gross value of the said estate where some of the property is located in other states, an appraisal certified to by the foreign court having jurisdiction thereof, shall be filed in the court of this State and the taxes shall be paid upon the true market value of the entire estate, less the indebtedness. On all sums above the first \$10,000, where the same shall pass to father, mother, husband, lineal descendant, adopted child or lineal descendant of adopted child, 1 per cent; on all sums not exceeding the first \$50,000, if the estate goes to the collateral heirs, including the third degree, 3 per cent, and where the estate goes to collateral heirs beyond the third degree, or strangers to the blood, 5 per cent; \$50,000 to \$100,000, 4½ per cent to collateral heirs to the third degree, and 9 per cent beyond the third degree or strangers; on all sums above the first \$100,000, 6 per cent to collateral heirs to the third degree, and 12 per cent to collateral heirs beyond the third degree, said taxes to be paid to the state treasurer. (Laws 1901, June 11th.)

All bequests and devises for charitable purposes are exempt from the inheritance tax.

Injunctions. A temporary restraining order will be granted without notice upon filing a petition showing sufficient facts, and an emergency. Before the order is issued, a bond must be given by two or more sureties, to be approved by the clerk; said restraining order shall name a return day, at which defendant may show cause why the order be not continued in force pendente lite. An appeal will lie to the supreme court from an order vacating or refusing to vacate said temporary restraining order. Superior courts have jurisdiction in equity in injunctions.

Insolvency. (*See Assignments.*)

Insurance Companies. No insurance company or association shall commence business in this State until it has a capital subscribed of not less than \$100,000, and a capital paid up in cash of not less than \$50,000. Non-resident companies shall appoint a resident agent, upon whom service can be made. All companies shall submit an annual statement of their business, and resources and liabilities, to the insurance commissioner, at the end of each calendar year, and all companies organized in the United States, shall pay 2 per cent on premiums collected, less losses paid, and all companies organized outside of the United States shall pay 3 per cent. Foreign companies must procure an annual certificate of authority to do business; fees therefor, \$10 per annum.

No insurance company organized to do business in this State shall commence business until it has at least two hundred thousand dollars of insurance written or contracted for.

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.

Jurisdiction. (*See Courts.*)

Licenses. For surety, guaranty and insurance companies, and all corporations, \$10 per year. Dairies and hunters, \$1 per year. Liquor licenses fixed by boards of county commissioners for places outside of incorporated cities and towns; the town or city councils fix licenses in their jurisdictions; all liquor licenses to be not less than \$300 per annum nor more than \$1,000 per annum. Commission merchants and grain weighers, \$5 per year. Pharmacists, physicians and surgeons, and dentists are required to pass an examination before a State board and to procure a license before practicing. A blacksmith, wagon maker, or boiler maker may have a lien for material and labor expended upon a chattel. Notice of lien to be filed within 90 days after work done; suit to foreclosure must be had within nine months after filing, by notice and sheriff sale, as in chattel mortgages.

Hunter's License. A resident to hunt in the county, \$1; in the State, \$5; a non-resident, \$10; an alien, \$50.

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 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, of 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 in the lumber business 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, incur, 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.

Mines and Mining. Discoverers of a lode shall within ninety days, from the date of discovery, record in the office of the auditor of the county in which said lode or ledge is found, a notice of his location, containing names, date of discovery, number of feet claimed and general course and description. Before filing such notice, discoverer must sink a shaft at least ten feet below the surface, or run an open cut. The claim shall be marked by substantial posts or monuments at each corner, not less than three feet high, and posts not less than three inches in diameter. An amended location may, at any time thereafter, be filed, changing the boundaries or taking in additional ground subject to location. Within thirty days after the performance of the annual labor upon any mining claim, an affidavit of such work performed shall be filed with the county auditor. Any mining district shall have the power to make road building to any mining claims in the district applicable as assessment work upon said claims. The capital stock of any mining corporation organized in this State may be fully paid up, by issuing same in payment of mining property conveyed to said corporation, and a stockholder may pay for his share of stock by conveying his proportionate interest in said mining property to the corporation.

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.

Notaries. (*See Acknowledgments, Protests, and Affidavits.*)

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. Husband or wife may give a power of attorney to the other spouse with full power to dispose of community property and any interest of the grantor.

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. No protest necessary on bills issued and payable within the State.

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.

Records. (See *Evidence*.)

Redemption. At any time within one year from the date of sale, on mortgage or other foreclosure of lien, or execution sale, the judgment debtor or his successor in interest may redeem the real estate by paying the judgment with the costs and 8 per cent interest thereon. Any subsequent judgment creditor or encumbrancer may likewise redeem. The purchaser is entitled to immediate possession, rents and profits from date of sale, except in the case of homestead or family residence; or in the case of agricultural land, the owner may retain possession, and the purchaser may have a lien on the crops raised or harvested, for interest on the purchase price at 6 per cent per annum, and for taxes.

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.

Savings Banks and societies shall every second year after December 15, 1905, furnish to the secretary of State a sworn list containing the names and last addresses of all persons, and amounts of their deposits, who for ten years last past have not dealt with their deposits or collected the interest thereon. Notice of these unclaimed deposits shall then be published four weeks; thereafter the attorney general shall take proceedings for forfeiture.

Sales in Bulk. Every person buying any stock of merchandise in bulk shall demand and receive from the vendor a sworn statement of the names and addresses of all the creditors and the amount due each, and the purchaser shall pay, or see to it that the money is applied to the payment of bona-fide claims of creditors. If such vendor shall omit any names of creditors from such sworn list or make a false statement, he shall be guilty of perjury, and upon conviction shall be punished by imprisonment in the penitentiary not less than one nor more than five years, or shall be fined not exceeding \$1,000. Any sale or transfer out of the ordinary course of business shall be deemed a sale in bulk.

Service. Where two or more parties are sued upon a joint claim or as partners, and but one is served, judgment may be rendered against all of them as partners, and against the one served personally, and such judgment may be satisfied out of the partnership property, or out of any property belonging to the one served. Service may be had on any foreign corporation by service upon its resident agent, whose appointment is recorded with the secretary of State. Telegraph, railroad, express, and insurance companies may be served by leaving papers with any resident agent authorized to collect moneys and solicit business. After parties have appeared in an action, copies of all papers and pleadings shall be served upon opposing counsel, and three days' notice must be given of all hearings, arguments or other action in court.

Suits. (See *Actions and Limitations*.)

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 31, 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 six months 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.

Testimony. (See *Evidence and Depositions*.)

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 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.

Trust Companies. Seven or more persons may form a trust company under the following conditions: 1. The capital stock shall not be less than \$100,000; except in cities of less than 25,000 inhabitants such companies may be organized with \$50,000 capital, and in cities having less than 10,000 such companies may be organized with \$25,000 and shall be divided into shares of \$100 each, all of which shall be paid in cash before any trust company shall be authorized to transact any business. 2. Such persons shall execute an organization certificate in triplicate which shall specially state: (1) The name by which the corporation shall be known. (2) The place where its business is to be transacted. (3) The amount of the capital stock and the number of shares into which the same is to be divided. (4) The name, residence, and postoffice address of each member of the corporation. (5) The term of its existence, not exceeding fifty years. 3. Must receive a certificate of authority from the secretary of State based on his examination of the assets of said company. 4. Must make not less than two verified reports of resources and liabilities each year to the secretary of State.

Fees of secretary of State, \$10 each, for filing articles of incorporation or certified copies of articles, issuing certificate of authority, for each renewal of authority, and for filing each semi-annual statement of condition; \$25 for making any examination required by this act. (See *Banks and Guaranty Companies*.)

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.

Warehouse Receipts. (See *Bills of Lading*.)

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), 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. The personal estate of every deceased person, together with all real estate which his personal representative is authorized by will to lease or sell shall be appraised by appraisers appointed for that purpose in each county in the State wherein the property of the decedent may be located. 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 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 to 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 hereafter 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 "change" 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 claimed 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.

Bankers, Private. No person without a State license therefor shall practice the business of money broker or private banker. The amount of the license tax is \$200. Incorporated banks, or savings institution, or trust company not required to obtain license.

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 savings 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. Corporations are not limited in the amount of their authorized capital stock. 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 four 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 are 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. Reasonable 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 kin-

cred, 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 *enclave* 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 \$300, 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 \$300. 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 pleaded, 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. They 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 has taken 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, 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. Every year sales are held by the sheriff of each county of the lands delinquent for taxes of the preceding year. 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 domicile, 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 C. I. HARING, Esq., Attorney 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 with residence 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 fore-
going (or within) instrument, and acknowledged the same.

.....
..... (Insert signature and 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 therein, 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 prorated 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. (See Notaries.)

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, Dower.)

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 or 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 garnished 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. (Secs. 1694 a-d, Rev. Stat. 1898.) 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. Assignee is considered as representing the rights and interests of the creditors and may bring an action to set aside fraudulent conveyances and transfers. (Chapter 207, Laws of 1901.)

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 before trial. 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 2023d to 2023g. State banks may be incorporated under the general banking laws of the State, collected and revised to 1898 as Section 2024 of the Revised Statutes. Any persons, associations, 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 (2023d). A statement of financial condition of banks must be published by the State treasurer in a newspaper published where the bank is located (2023g). 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. 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. The examiner shall publish annually report showing statements by banks. No security, but the in-

dividual 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 incorporators, 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. Wisconsin voters are to vote at the general election in November, 1902, upon an amendment to the constitution authorizing the legislature to enact a general banking law. (Chap. 73, Laws of 1901.)

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. There is no prescribed form of chattel mortgage.

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) must pay license fees of thirty dollars and upwards. Strict regulations as to peddlers and transient merchants. (Chap. 341, Laws of 1901.)

Corporations may be formed by at least three adult residents of state under written articles, stating business and purposes of corporation, name, location, capital stock, number of shares and par value. Articles must be recorded with secretary of State and in county where corporation is located. Until at least one-half of the capital stock is duly subscribed and at least 20 per cent thereof actually paid in, corporations cannot transact business with other than members. When a corporation is so organized, stockholders are liable only to amount of stock subscription until same is fully paid. In case of banking corporations stockholder is further liable for debts of bank to amount of his stock, and similarly in other corporations for six months' wages. Foreign corporations engaged in manufacturing with Wisconsin, shall, upon written request by any resident creditor, file within sixty days, and annually thereafter, a statement showing the amount of capital subscribed and amount thereof actually paid in, the full name of each of stockholders and amount of stock held by each, and the proportion of its capital stock represented by its Wisconsin property, and must pay to secretary of State upon such proportion over \$25,000 one dollar for every \$1,000. If corporation subject to license fees, such payment shall not exceed \$25. (Chap. 399, Laws of 1901.) When these and all other provisions of statutes complied with, secretary of State issues license to corporation to transact business in State. Failure to file statement deprives corporation of right to carry on or transact business in Wisconsin.

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 \$500 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 enforceable 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. (But cf. *Pinney v. Providence Co.*, 106 Wis. 396.)

Days of Grace are abolished by statute.

Deeds. (See *Acknowledgments, Notaries.*) 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, attachment, or mechanics' lien. Deeds and like instruments for record may 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. 4113-16—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 OF COURT XVIII, Sec. 4,** provides—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 sections 4113 and 4114 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 sections 4113 and 4114, 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.

The following is a (statutory) form of return of the officer taking the deposition:

State of Wisconsin, county of ss: I, a in and for said county, do hereby certify that the above deposition was taken before me, at my office in the town of in said county on the day of A. D. 19 at o'clock in the noon; that it was taken at the request of the upon verbal (or written) interrogatories; that it was reduced to writing by myself (or by a disinterested person, in my presence and under my direction); that it was taken to be used in the action wherein plaintiff and

. defendants now pending in the court of county, and that the reason for taking it was that a notice, of which the annexed is a copy, was served upon on the day of A. D. 19 (or, that said deposition was taken in pursuance of the annexed stipulation) that said deponent, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth, relative to said cause, and that said deposition was carefully read to (or by) said deponent, and then subscribed by him. (Signature of officer before whom deposition was taken, adding official designation.)

Descent and Distribution. Realty (except homestead, *q. v.*), undivided, 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 dowerable only of lands owned by husband at death. Tenancy by curtesy is independent of issue. Personality is distributed by rule—widow entitled to same share as a child. If no issue, all property goes to surviving husband or wife. A Wisconsin law imposing inheritance taxes has been recently declared constitutional.

Divorce. Marriages prohibited by law for relationship or husband or wife living are void without proceedings; in case of lack of age or understanding, or when consent obtained by force or fraud may be adjudged void if no voluntary cohabitation. Divorces absolute, or from bed and board forever, or for limited time.

An absolute divorce may be obtained on following grounds: 1. adultery; 2. impotency; 3. sentence to three years imprisonment or more; 4. willful desertion for one year; 5. cruel or inhuman treatment or habitual intoxication of wife; 6. habitual drunkenness for one year; 7. voluntary separation for five years. One year's residence required. Divorce from bed and board forever or for limited time may be adjudged for 4th, 5th, and 6th causes for extreme cruelty or for willful failure to provide, or husband's conduct making unsafe for wife to live with him. No person divorced by Wisconsin court can marry again within one year, unless authorized so to marry by the court granting the divorce.

Dower. (See *Descent and Distribution.*)

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.

Foreign Judgment. (See *Limitations of Actions.*)

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.

Guaranty Companies may be formed for guaranty of title to lands, or of owners of real estate and real estate mortgages, or other persons interested in real estate, from loss by reason of defective titles, liens, or incumbrances. Special provisions for taxation exist for such companies.

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 not exceeding \$5,000 in value and 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. (Chap. 269, Laws of 1901.) 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.*)

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.

Insurance Companies. Foreign insurance companies doing business in Wisconsin are subject to numerous and exceedingly strict statutes. They must file with the commissioner of insurance annually a report of the amount of gross income and pay an annual license fee of 2 per cent thereon.

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. (See *Chattel Mortgages*.)

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 or complaint actually served 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. In case of injury to person upon highway notice must be served within 15-30 days.

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 and bar dower 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 and begins suit within six months from such date. Liens may be assigned.

Mortgages. (See *Chattel Mortgages, Deeds*.)

Notaries appointed by governor with full powers as to taking depositions and acknowledgments and administering oaths. After August 1, 1901, must affix seal and date when commission expires to instruments requiring acknowledgment.

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 *Administration*.)

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.

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.

By chapter 463 of the laws of 1901 the sale of any portion of a stock of merchandise, in bulk or otherwise, than in the ordinary course of trade and business is presumed fraudulent and void as against creditors, unless the seller and purchaser, at least five days before the sale, notify personally or by registered mail each of the seller's creditors of such proposed sale.

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, but this act has been declared unconstitutional by the supreme court of Wisconsin.

Transfer of Corporation Stock. Shares of stock are transferred by endorsement and delivered good in the hands of bona fide purchaser, or pledgee, for value as against all parties. The corporation may treat holder of record as holder in fact until transfer on record or new certificate issued, and courts will compel such record or issue.

Trust Companies may be incorporated by any number of persons not less than five, with a capital stock to be fixed and limited by the articles of incorporation to not less than \$100,000 and not over \$5,000,000, or in cities of less than 100,000 inhabitants not less than \$50,000. Upon proof that 50 per cent has been paid in, corporation may commence business. Balance of capital stock must be paid within six months, and not less than 50 per cent, when more than \$100,000, must be deposited with State treasurer in cash, bonds, or mortgages worth double amount secured thereby, or other first-class bond or real estate security. Every director must own and hold not less than ten shares of stock; such corporation thereupon has full usual powers of trust companies and may act as executor, administrator, trustee, assignee, or guardian; may loan money upon real estate and collateral and accept deposits. It may lease, purchase, or hold and own land to carry on its business, and must pay to the State treasurer, as a license fee, \$300 and in addition 2 per cent of net income, which shall be in full of taxes except upon real estate.

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 BURKE & CLARK, Attorneys 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 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 acknowl-

edged 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 one year 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 arbitration, 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. In justice of peace courts attachment may be had where the cause of action sued on arises on a contract, express or implied, for the direct payment of money not exceeding in amount \$200, and that the contract is not secured by a mortgage or lien upon real or personal property, or pledge of personal property, or if originally so secured, that such security has, without any act of the plaintiff, or the person to whom it was given, become inadequate to secure such contract, provided, that undertaking may be given by defendant.

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 employ 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.

Costs. In justice court the costs of suit are ordinarily taxed against the losing party. In the district court, when the judgment is less than \$100, unless the recovery be reduced below that sum by counter claims, or set off, each party shall pay his own cost; and in all actions for libel, slander, malicious persecution, assault and battery, false imprisonment, criminal conversation, or seduction, action for nuisance, or against a justice of the peace for misconduct in office, when the damage assessed is under \$5, the plaintiff shall not recover costs. When it is not otherwise provided by statute, costs shall be allowed, of course, to the plaintiff, upon a judgment in his favor, in action for the recovery of specific, real, or personal property. Costs shall be allowed, of course, to any defendant, upon a judgment in his favor in the actions mentioned in the preceding part of this paragraph. In other actions the court may award or tax costs and apportion them between parties, on the same or adverse sides, as it may adjudge to be right and equitable.

Courts. Terms and Jurisdiction. The Supreme court holds two regular terms annually at the capital of the State. Its business is principally 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 \$300.

Creditors' Bills. There is no statute expressly relating to this subject.

Days of Grace abolished by the Negotiable Instrument Act of the Legislature of 1905, being an act to establish a law uniform with the laws of other States on that subject.

Deeds. (See *Acknowledgments and Mortgages.*)

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 decedent 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 necessities 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 one year 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.

Evidence. All persons are competent witnesses except those of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions, respecting which they are examined, or of relating them truly. In no case shall the husband or wife be a witness against the other, except in criminal proceedings for a crime committed by one against the other, or in a civil action or proceeding, by one against the other, or in certain matters of a quasi criminal character, but they may in all civil and criminal cases be witnesses for each other the same as though the marital relations did not exist. The law provides what communications and acts shall be privileged. Ordinarily a party may not testify when the adverse party is a guardian or trustee of either a deaf and dumb or insane person, or of the child of a deceased person, or as an executor and administrator or claims or defends as heir grantee, assignee, devisee, or legatee of a deceased person. A party may compel adverse parties to testify orally or by deposition, as any other witness may be thus compelled.

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 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. One-half of the earnings of a judgment debtor for his personal services, rendered at any time within sixty (60) days next preceding the levy of execution or attachment and due and owing at that time, where necessary to the use of a family supported wholly or in part by his labor, and residing in this State. 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.

Foreign Corporations. Every incorporated company, incorporated under the laws of any foreign State or Kingdom, or of any State or Territory of the United States, beyond the limits of this State, except insurance companies now or hereafter doing business within this State, shall, within thirty days after commencing so to do business, file in the office of the secretary of State, and also file in the office of the register of deeds of the county within which its business is conducted, a copy of its charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate, and of such general incorporation law, duly certified and authenticated by the proper authorities of such State, Kingdom or Territory.

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.

Foreign Judgment. An action upon a foreign judgment, rendered before the debtor becomes a resident of this State, must be commenced within two years after he shall have established his residence in the State.

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. Garnishment 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.*)

Guarantee Companies. Provision is made in the law by which any official bonds or undertakings, recognizances, or other obligations required by law, to be given by any executor, administrator, guardian, trustee or receiver, or in any court proceeding, may be furnished by a guarantee company properly qualified under the laws of the State, to do business in the State.

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.*)

Injunctions. Certain sections of the code of civil procedure relate to injunctions, but the usage in matters of this kind conforms very nearly to that of courts of equity. Ordinarily, an undertaking is required to be given before the issuance of an order granting the injunction, in an amount to be fixed by the court or judge, to secure the party enjoined any damages he may sustain, if it be finally decided that the injunction ought not to have been granted. An injunction binds the party from the time he has notice thereof, and the undertaking required by the applicant therefor, is executed.

Insolvency. (*See Assignments and Insolvency.*)

Insurance Companies. Provision is made in the law for the organization of insurance companies, but the statutes on the subject are of such great length that it is impossible to include them in a synopsis.

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.

Jurisdictions. Justices of the peace have jurisdiction in civil actions where the amount involved does not exceed \$200 in value, and the title to real estate does not come in controversy. The district court is the court of general jurisdiction in all civil cases, and it has also jurisdiction of all probate matters, including the estates of persons under guardianship. The district court has appellate jurisdiction in cases tried before justices of the peace. The supreme court has general appellate jurisdiction in both civil and criminal cases, and also has a general control over all inferior courts under such rules and regulations as may be prescribed by law. This court also has power to issue writs of mandamus, review, habeas corpus, certiorari, and other rights necessary and proper to the complete exercise of its appellate and revisory jurisdiction.

License. Traveling agents who sell exclusively by sample or otherwise to regular merchants doing business in the State are not required to procure a license.

Canvassers for pictures, chromos, engravings, sewing machines, and books, except law books, and all canvassers for the enlarging of photographs, are deemed to be peddlers, and subject to the same license and other restrictions as are now provided by law for peddlers. The amount to be paid for a peddler's license is \$300 per year.

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.

Mines and Mining. The law of the state provides for the organization of mining districts and keeping the records thereof. It also makes provision for the location of placer or lode claims and recording the certificate of location and what the certificate shall contain. In most respects the law of the United States in regard to these matters is followed. There is also quite a lengthy law in regard to the management of coal mines.

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 by mortgagee from date of sale, upon payment of the amount for which the property was sold and ten per cent interest thereon, and within three months thereafter by any creditor.

Negotiable Instrument. The legislature of 1905 passed what is known as the uniform negotiable instrument law, being an act to establish a law uniform with the laws of other States on that subject.

Notaries. The governor has the right to appoint one or more notaries public in each county of the State, and the appointment is for the period of four years. No person is eligible for the appointment to such office unless he or she is a person of good moral character, a citizen of the United States, over the age of twenty-one years, able to read and write the English language, and an actual resident of the State of Wyoming and of the county for which he is appointed. Persons who have received the appointment of notary public are required to give a bond to the State of Wyoming, in the sum of \$500, conditioned for the faithful performance of the duties of the office. Notaries public are entitled to administer oaths and affirmations, to take depositions, to receive acknowledgments of deeds, mortgages, and other instruments in writing, to demand payment or acceptance of foreign or inland bills of exchange, promissory notes, and obligations in writing, and to protest the same if non-acceptance or non-payment, as the case may require.

Notes and Bills of Exchange are subject to a State law which substantially enacts the law merchant. The 1st day of January, the 12th and 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.

Partnerships. The law makes provision for special partnerships, which may consist of one or more persons, called general partners, and one or more persons called special partners. Persons forming such a partnership must severally sign a certificate, stating, first, the partnership name; second, the general line of business intended to be transacted; third, the names of all the partners and residences, specifying which are general and which are special partners; fourth, the amount of capital

which each separate partner has contributed to the common stock, and fifth, the period at which such partnership will begin and end. This certificate must be acknowledged and filed in the office of the county clerk and ex officio register of deeds of the county in which the principal business of the partnership is situated. An affidavit of each of the partners, stating that the sum specified in the certificate of partnership, as having been contributed by each of the special partners, have been actually and in good faith paid, must be filed in the same office with the original certificate. The general partners in a special partnership are liable to the same extent as persons in a general partnership. The contributions of the special partner to the capital of the firm, and the increase thereof, are liable for its debts, but he is not otherwise liable, unless he has performed certain acts, specified in the statute, of a fraudulent nature or has willfully interfered with the business of the firm.

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.

Records. All deeds, mortgages, and other papers in any way affecting the title to land should be recorded in the office of the county clerk and ex-officio register of deeds of the county in which the land to which such papers relate, is situated. Chattel mortgages should be filed, but not recorded, in the office of the county clerk of the county in which the mortgaged property is to remain during the term of the mortgage.

Redemption. The law provides a period of six months, in which real property sold by virtue of an execution, order, judgment, or decree of any court, or by foreclosure of any mortgage or deed of trust, either by advertisement or action, by the party entitled to make such redemption. Judgment creditors have three months additional time in which to make such redemption.

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.

Revision. The latest revision of the statutes of Wyoming was published in 1899 and includes the statutes of said State in force on December 1st of that year. Since that time there has been three sessions of legislature; viz, 1901, 1903, and 1905, and the laws enacted at these sessions appear in the volume of said laws for the years A. D. 1901, 1903, and 1905.

Service. Service of summons and other writs or processes issued by the district court of the State is ordinarily made by the sheriff of the proper county, but provision is made for service by publication in certain cases where the defendant is a non-resident of the State or his residence cannot be ascertained. Service of summons, issued by justices of the peace, may be made by the sheriff, or any constable, of the proper county.

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.

Testimony. (*See Evidence and Depositions.*)

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.

Trust Companies. (*See Banks.*)

Warehouse Receipts. Warehouse men are prohibited from issuing receipts for goods or other property, unless such goods or other property shall have been bona fide, received into store by such warehouse man, and such goods shall be in store at the time of issuing of such receipts. They are also prohibited from issuing receipts or other vouchers upon goods or other property as security for money loaned, or other indebtedness, unless such goods or other property shall be, at the time of the issuance of the receipt, the property of such warehouse man, and shall be in store and under his control at the time of the issuance of such receipt. Warehouse men are also prohibited from issuing a second receipt for any goods or other property while the former receipt for any such goods or other property, or any part thereof, shall be outstanding and uncanceled.

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 ALBERTA.

By Chapters 41 and 42 of the acts of parliaments of Canada for the year 1905, the Provinces of Alberta and Saskatchewan were erected out of a portion of the Northwest Territories. By the acts creating these Provinces, existing territorial laws were continued until repealed or amended by the legislatures of the new Provinces.

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared by Messrs. LOUGHEED and BENNETT of Calgary, Alta., Advocates. (See card in attorney's list.)

Accounts. Must be in detail, and give full name and address of person claiming payment verified by affidavit.

Administration of Decedent's Estate. Probate of wills or letters of administration are granted by the Supreme Court in the judicial district where the deceased resided when he died; in case death was outside the Territories, the district where there was any property of the deceased. Bond, with one or two sureties, is required from a person to whom letters of administration or guardianship are committed. Where probate or letters of administration granted in the United Kingdom or any dominion or British Province are produced to, and a copy thereof deposited with the registrar of the Supreme Court of the Territories and his fees paid, they may, under the direction of the judge, be sealed with the seal of the supreme court, and thereupon will have the same force and effect as to personal estate as if granted by that court. A judge has power, in his discretion, to order sale of an infant's estate. Real property descends as chattels real, and becomes vested in the executor or administrator as personal property.

Affidavits. In matters in court, affidavits must be made in the first person and divided into paragraphs. When sworn to in the Territories they shall be sworn to before a judge, clerk of the court or deputy clerk, notary public, justice of the peace or commissioner for taking affidavits; and when sworn to outside of the Territories and in any British possession, before a judge of any court of record, notary public or person lawfully authorized to administer oaths therein; and when in any foreign country before any of His Majesty's Consuls or Vice-Consuls. Every person administering oaths shall express the time and place of so doing. All interlineations, alterations and erasures in the jurat or the body of affidavits must be initialed by the officer taking the same. Accounts, extracts, documents, etc., referred to in the affidavit must be referred to as exhibits and not as being annexed; such exhibits must be marked by the officer taking the affidavit. In other cases affidavits may refer to annexed documents. As to affidavits of execution of documents see Deeds, etc., below. (Jud. Ord. 273-297.)

Aliens may acquire, hold, and dispose of real property as effectually as a natural-born British subject.

Arrest. There is no provision made for arrest for debt. It is provided that where there is no ordinance, the judge giving judgment has the power to direct what proceedings be taken to enforce it. It is also provided, where there is no ordinance, the procedure and practice existing in England the first day of January, 1885, shall govern.

Assignments and Insolvency. Assignment of property by any person at any time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat or delay or prejudice his creditors, or give one a preference over the others, or over any one or more of them, or that has that effect, is void; but an assignment made by the debtor for the purpose of paying all his creditors rateably and proportionately and without priority, or any bona fide sale of goods, or payment made in the ordinary course of trade to innocent purchasers is valid. The court has a general jurisdiction to enforce the proper distribution of insolvent estates.

Attachment. Property not exempt from seizure under execution may be attached at or after the commencement of an action, upon the affidavit of the plaintiff or his agent verifying his claim and stating that the debtor has absconded from the Territories leaving personal property liable to seizure, or has attempted to remove same with intent to defraud his creditors or the plaintiff in particular, or keeps concealed to avoid service of process, and also that in the belief of the deponent, without the benefit of the attachment, the plaintiff will lose his debt or sustain damage; and upon the affidavit of one other credible person that he is well acquainted with the defendant, and has good reason to believe, giving such reasons, that the defendant has absconded or attempted to remove his personal property out of the Territories, or to sell or dispose of the same, or keeps concealed to avoid service as aforesaid. The two affidavits are filed with the clerk of the court and the clerk issues the writ of attachment directed to the sheriff, to attach and keep all the personal property of the defendant liable to seizure for debt. But where the debtor has actually absconded from the Territories, leaving no wife or family behind, no property of the defendant shall be exempt from seizure. The amount of the debt is stated in the writ of attachment, and the sheriff levies for the amount thereof and the costs of the proceedings. A writ of attachment may be set aside by a judge upon sufficient proof by affidavit that the same was issued without sufficient cause. (Jud. Ord., Secs. 396-400.)

Banks. The subject of banks is one which by the Canadian constitution is expressly reserved for the Parliament of Canada. The legislature of the Territories has no power to deal therewith. The legislation on the subject is contained in the Bank Act of 1890, with the amendments thereto of 1900. For a resume of its main provisions see the synopsis of the laws of Ontario.

Bills of Exchange and Promissory Notes. Three days grace is allowed on all notes and bills other than those payable on demand, etc. In case of dishonor the indorser is relieved from liability unless he has been given notice of dishonor, bills and notes falling due on legal holidays are payable the day after. No stamps are required. (Stat. 52 Vic. Cap. 33. Dom. The Bills of Exchange Act, 1891.)

Chattel Mortgages. Chattel mortgages to secure debts require an affidavit of execution, and affidavit of bona fides to be made by the mortgagee or his duly authorized agent (a copy of such authority to be attached to the affidavit) stating that such mortgage is given in good faith, that the mortgagor is justly and truly indebted to the mortgagee in the amount claimed, and that it is not given to defeat the creditors of the mortgagor. They must be registered within thirty days from execution and must be renewed within two years from date of registration and renewed thereafter every year. Similar provisions also exist respecting chattel mortgages to secure endorsements and also future advances. (Bills of Sale Ord. 1895.)

Claims Against Estates of Deceased Persons. The executor, administrator or any creditor may apply to a judge in chambers for the administration of the estate of a deceased person, and for payment of claims against the estate. (Jud. Ord., Sec. 462-469.)

Provision is also made for the appointment of an official administrator. (Ord. 1897.)

In the administration of the estate of the deceased persons simple contract debts and specialty debts rank equally. (Imp. Act, 32-33; Vic. Cap. 40.)

Corporations Organized for Business Purposes. Incorporation of a company for business purposes within the Territories may be obtained by charter under the general act called "The Joint Stock Companies Act" of the province, by any number of persons not less than three upon application by petition, first advertising notice of such intention in the public gazette. Before charter is granted, one-half of the proposed capital stock must be subscribed, and at least 2 per cent thereof paid into a chartered bank to the credit of the company. The company's affairs are managed by a board of directors of not more than nine or less than three. To limit the liability of shareholders the word "limited" must be attached to the company's name. The liability of shareholders is limited to the amount unpaid on their shares. If directors declare or pay a dividend when the company is insolvent, they become personally liable for debts of the company. They are also personally liable for wages of servants of the company not exceeding six months, providing action is therefore brought within one year from time debt became due against the company, and the director is sued within one year from time he ceased to be director. Before action for wages can be brought against a director execution against the company therefor must have been returned "no goods." Contracts by a company's agent or officer are binding without use of seal.

Courts - Jurisdiction. The supreme court is the only one, and has jurisdiction in both criminal and civil matters. It consists of five judges. Each judge has jurisdiction throughout the Territories, but usually exercises the same in his own judicial district. Appeal lies from the several judges to the court in banc; any three of the judges of the court constitute a quorum, the judge from whose judgment appeal is taken not being one. (Rev. Stat. of Canada, Cap. 50, Sec. 41, and amending Acts.)

Deeds - Acknowledgments, etc. This is an incorrect appellation under the existing ("Torrens") system of land transfer. Land is now conveyed by a transfer. Transfers, mortgages, etc., should be executed in the presence of one witness who can write, and for the purpose of registration an affidavit of execution must be attached or endorsed. General forms are provided by statute relating to registration. The affidavit of execution, if made in the Territories, shall be made before the registrar or a judge, or a stipendiary magistrate, notary public, or a justice of the peace in and for the Territories; if made in any province of Canada, before a judge or any court of record, any commissioner for taking affidavits in such province for use in any court of record in the Territories, or before any notary public under his official seal; or if made in any British possession or colony out of Canada, before a judge of any court of record, the mayor of any city or incorporated town under its common seal, or notary public under its official seal; if made in a foreign country, before the mayor of any city or town under its common seal, or the British consul, vice-consul, or consular agent therein, or before a judge of any court of record, or a notary public under his official seal. (Land Titles Act Alberta.)

Depositions. Depositions in any case or matter pending in the Supreme Court may be taken out of the Northwest Territories under commission. The application for same is made by way of summons before the judge in chambers. (Jud. Ord., Secs. 245-266.)

Descent. The laws relating to both real and personal property are the same. If the intestate leaves a widow and any child or children, or descendant of any child, the widow shall take a third part. If intestate leaves no issue, his widow shall take all, provided that she has lived chastely. The husband of a married woman is entitled to the whole of her effects on her death intestate. If the intestate leaves a widow and child or children, two-thirds of his estate shall go to such child or children. The father of any person dying intestate without wife or children takes all intestate's property. The mother of any person dying intestate without wife, child, or father takes all. In the distribution of the personal property of any woman dying intestate, her illegitimate children shall be entitled to the same rights as if they were legitimate. The mother of any illegitimate child dying intestate shall take all the personal property of such child.

Dower, etc. There is no dower nor tenancy by curtesy.

Evidence. (See Testimony.)

Executions. Executions may be issued immediately on signing judgment unless the judge fixes a period for payment. Executions cease to bind unless renewed within two years from the date of issue. A renewal is good for one year, and must be renewed within that time. (Jud. Ord., 317-363.)

Exemptions. The following are exempt from seizure under writs of execution: 1. The necessary and ordinary clothing of the defendant and his family. 2. The furniture, household furnishings, dairy utensils, swine and poultry belonging to the defendant and his family to the extent of \$500.00. 3. The necessary food for the defendant's family during six months, which may include grain and flour, or vegetables and meat, either prepared for use or on foot. 4. Three oxen, horses or mules, or any three of them, six cows, six sheep, three pigs and fifty domestic fowls, besides

the animals the defendant may have chosen to keep for food purposes, and food for the same for the months of November, December, January, February, March, and April, or for such of these months or portions thereof as may follow the date of seizure, provided such seizure be made between the first day of August and the thirtieth day of April next ensuing. 5. The harness necessary for three animals, one wagon or two carts, one mower or cradle and scythe, one breaking plow, one cross plow, one set harrows, one-horse rake, one sewing machine, one reaper or binder, one set sleighs and one seed drill. 6. The books of a professional man. 7. The tools and necessary instruments to the extent of \$200.00 used by the defendant in the practice of his trade or profession. 8. Seed grain sufficient to seed all his land under cultivation, not exceeding eighty acres, at the rate of two bushels per acre, defendant to have choice of seed, and fourteen bushels of potatoes. 9. The homestead of the defendant, provided that same be not more than one hundred and sixty acres; in case it be more, the surplus may be sold subject to any lien or encumbrance thereon. 10. The house and buildings occupied by the defendant, and also the lot or lots on which same are situate, according to the registered plan of the same, to the extent of fifteen hundred dollars.

Any article except for the food, clothing, and bedding of the defendant and his family, the price of which forms the subject matter of the judgment upon which execution issued, is not exempt.

In case of death, the exemptions may be claimed by the widow, children, executor, administrator, or other personal representative of the deceased.

Garnishment. Money may be garnished and paid into court to await judgment, or after judgment to satisfy the same except the wages for one month, not exceeding \$25, due or accruing due to a mechanic, laborer, servant, clerk, or employe. The garnishee has twenty days within which to appear and pay money into court. (Jud. Ord., Sec. 368-379, and Amendments.)

Infants. The Supreme Court has control over infants' estate, and will appoint a guardian whenever necessary, and will direct the management of their property. An infant can only sue or be sued by its next friend or by a guardian appointed by the court. No debt of an infant can be recovered except for necessities. A minor is specially given the right to sue for wages in his own name for any amount.

Injunctions. In any case or matter where an injunction has been or might have been claimed, the plaintiff may before or after judgment apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of an injury or breach of contract of a like kind relating to the same property or right arising out of the same contract. The injunction may be upon or without terms.

Insolvency and Bankrupt Laws. There are no insolvency or bankruptcy laws in force. Debtors sometimes make a voluntary assignment to a trustee for the benefit of their creditors, but are not thereby released from any balance of debts remaining due after distribution of their estate assigned.

Interest. Five per cent is the legal rate of interest if no other is agreed upon.

Judgments. To be binding on land, a certificate thereof must be registered in the land titles office, and an execution kept in force in the sheriff's hands, and must be for \$50 or more.

Justices of the Peace. Justices of the peace have the ordinary powers of such officers, and exercise jurisdiction all over the Territories. Provision is made for limitation of time within which prosecutions for various offenses may be commenced. (Criminal Code 1892, Section 51i.)

Liens, Mechanics'. Every mechanic, machinist, builder, miner, laborer, contractor, and other persons doing work upon and furnishing materials in respect to any building, erection or mine, or furnishing machinery or material in respect thereof, has a lien for the amount of such work or value of such material, machinery, etc., on said building, erection or mine, etc., and the lands on which same are situate. He has thirty-one days within which to file his account, and thirty days thereafter to bring an action in support thereof, which must be done to hold lien. (Rev. Ord., Chap. 48, and amending ordinances.)

Limitation of Actions. All actions for recovery of merchants' accounts, bills, notes, and all actions of debt, grounded upon any contract, not being a specialty, shall be commenced and sued within six years after the cause of such action arose; contracts under seal, twenty years; judgments, twenty years; recovery of land, twelve (12) years. (Rev. Ord., Cap. 56, and amending ordinances.)

Married Women. Real and personal estate of married women are free from husband's debts. She may convey to her husband and her husband may convey to her without the intervention of trustees. She has no dower in her husband's estate. She may carry on business separate from her husband as if she were a feme sole. Her husband is not entitled to any estate by curtesy in her real property. (Land Titles Act 1894, and Ordinances 1889, 1890.)

Mortgages. Mortgages are executed in the form prescribed by the Land Titles Act (Torrens' System). A mortgage does not operate as a transfer of land, but after default of payment for one month mortgagee may give notice of his intention to sell, and if default still is made after thirty days, may sell land under legal process by private or auction sale. If land is not sold, after again advertising, mortgagee may have the title vested in himself. Mortgages must be duly registered under the provision of the Land Titles Act, and take priority in order of registration. (See Land Titles Act Alberta.)

Partnership. All persons associated in partnership for trading, manufacturing, or mining purposes, must within six months after the formation thereof, file in the same office as chattel mortgage in the districts where they intend to carry on business a declaration in writing signed by the members of such partnership excepting those out of the country, stating the full name of each partner, the name and style of firm under which business is carried on, the time during which the partnership has existed and is to exist, and that they are the only members of such partnership. A person in business alone, but using the addition of "and company" to his name, must file the same declaration as above. Failure to comply with the above requirements subjects each member of any partnership to a fine of \$100.

A partner failing to sign above declaration with the other parties may, notwithstanding, be sued jointly with the other partners for any partnership debt.

By the "Partnership Ordinance 1899" limited partnerships may be formed of one or more general and one or more special partners. The latter shall not be liable for the debts of the partnership except in respect of amounts contributed by him or them to the capital.

General partners only transact business and are liable to be parties to actions.

In case of insolvency of the partnership, creditors are preferred to special partners.

A certificate of such partnership shall be filed with the Clerk of the Court.

Proof of Claims. The particulars of open accounts must be furnished unless claim is over one hundred dollars and particulars over three folios in length. If the claim is contested, claims may be proved by commission to take evidence abroad. If on judgment, exemplification of same is required. If the plaintiff resides out of the jurisdiction, defendant may demand security for costs which must be furnished him within three months of, or action stands dismissed. The security usually ordered is a deposit of two hundred dollars or more or a bond with two resident responsible sureties in the sum of three hundred dollars. (Jud. Ord. Sec. 520.)

Recording Acts. Registration of land in the Province of Alberta and registration offices are provided for by the Land Titles Act of Alberta. The registration districts are respectively North Alberta and South Alberta. Deeds, mortgages, assignments, and other instruments, to be in substance in forms given by act, which are of very simple character. It is further declared in act that no instrument till registered be effectual to pass any estate or interest in any land (except a leasehold interest for the period of three years or less), or render such land liable as security for payment of money, but when registered has full force and effect. An instrument before registry must be attested by a witness, who must make affidavit as to same. Instruments take priority according to time of registration. A certificate of title may be granted under the act, which is declared to operate as conclusive evidence that the person named in such certificate is entitled to the land included in such certificate for the estate and interest therein specified. An assurance fund is provided to compensate a party deprived of land by any fraud, error, omission, or misdescription, in any certificate or title.

Redemption. (See Mortgages.)

Replevin. A plaintiff claiming that property has been unlawfully taken or detained may obtain a writ of replevin. Requires an affidavit of plaintiff or his agent stating description of property, value of same, right to possession, time and manner in which same was taken, etc. Before the sheriff replevies, plaintiff must give a bond to him in double the verified value of the property. (Jud. Ord., Secs. 401-405.)

Reports, Judicial. The only provincial reports are those of the Supreme Court of the Territories.

Review of Judgment. Appeal lies to the court in banc, and must be made within thirty (30) days from day of judgment, but the judge may extend the time. Leave to appeal is necessary where the amount in question on appeal is less than two hundred dollars. Security must be given to the satisfaction of the trial judge within thirty days from date of judgment, but time may be extended. Execution is not stayed unless specially ordered by the judge, generally on increased security being given. (Jud. Ord., 504-517, and amendments.)

Sales of Goods Ordinance. Sec. 6. A contract for the sale of any goods of the value of fifty dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the contract or in part payment or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

Service of Process. Service of Writ must be personal. Orders to serve substitutionally, or by advertising or otherwise, may be obtained in certain cases. When the defendant resides in the judicial district in which the writ was issued, he has twenty days to appear. When he resides in another judicial district he has twenty-five days, and when out of the jurisdiction as the judge may see fit. (Jud. Ord., Sec. 21, and amending Ordinances.)

Small Debts. There are special provisions for suing claims for debt or breach of contract of one hundred dollars or under. Plaintiff may enter action by leaving with clerk written copy of account, note, etc. Defendant is allowed twenty days to enter dispute when he resides in judicial district, thirty days when out of jurisdiction or in the United States. Trial may be held by the judge in chambers. Costs are disbursements and a counsel fee of not more than ten per cent of the amount recovered. (Jud. Ord. Small Debt procedure.)

Statute of Frauds. The Imperial Statute of Frauds is in force. The fourth section of that statute is as follows: "That 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 the defendant upon any special promise to answer for the debt, default, or miscarriage of another person or to charge any person upon any agreement made in consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them 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 action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

No action shall be brought whereby to charge any person either by commission or otherwise, for services rendered in connection with the sale of any land, tenements or hereditaments or any interest therein, unless the contract upon which recovery is sought in such action, or some note or memorandum thereof, is in writing signed by the party sought to be charged, or by his agent, thereunto lawfully authorized in writing.

This act shall not apply to or affect any action or proceeding pending, or any right or right of action existing at the date when this act is passed. (Statutes of Alberta 1906, Chapter 27.)

Stay of Execution. Execution may be stayed on motion to the judge showing special grounds, and to such terms as to security or otherwise as a judge may impose. (Jud. Ord., Secs. 319-323.)

Supplementary Proceedings. A judgment debtor or any other person may be examined upon the order of the judge as to what debts are owing to the judgment debtor and what means he has of satisfying the judgment. The production of any book or books, documents, etc., may be ordered. In the case of a corporation any official thereof may be examined. (Jud. Ord. 364-367.)

Tax Laws. Land may be sold for two years' arrears of taxes (municipal) after due notice in the *Alberta Gazette* and advertisement in a local newspaper and may be redeemed by any person acting in the owner's behalf or interested therein at any time before the expiration of one year thereafter. In cities the Charters make special provision in the matter of taxes and the collection thereof.

Testimony. Witnesses are examined viva voce in open court but the judge may order that any particular fact may be proved by affidavit or that affidavit of any person may be read at the trial, or he may order that any witnesses whose attendance in court for some reason ought to be dispensed with may be examined by interrogatories or before a commissioner or examiner. Any evidence taken in one cause may by leave of the judge be read in any other cause or matter. Copies of all writs, records, pleadings, documents, etc., filed in court are, when certified by clerk admissible in any cause or matter to the same extent as the original would be. The provisions of the "Canada Evidence Act, 1893" now apply to all proceedings and matters over which the legislative assembly has jurisdiction. (Jud. Ord. Sec. 243-244.)

Trust Deeds. (See *Chattel Mortgages*.)

SYNOPSIS OF THE LAWS OF BRITISH COLUMBIA

RELATING TO

BANKING AND COMMERCIAL USAGES.

prepared by ROBERT WETMORE HANINGTON, Barrister, Nelson.

(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 whether 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, or the debtor's chattels may be sold, before judgment, by order of the judge. 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 foregoing 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 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 subpoena. 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 *causis*, 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 the 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 *causis*, the plaintiff must pay to the sheriff, in advance, \$3.50 per week for the debtor's maintenance while imprisoned, otherwise the debtor is entitled to his discharge. (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 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 property, real estate, credits and effects which may be seized and sold under execution," 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 binds all property of the debtor in the Province, and takes priority over all judgments, attachments, and executions not completely satisfied by payment. Notice of the assignment must be published by the trustee in the *B. C. Gazette* and a daily newspaper, and a meeting of creditors held within nineteen 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. A majority of the creditors may also, by resolution, appoint any other person to be assignee. **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. Payments (excepting wages, rent, taxes or water rates) made by the debtor within ten days before the assignment, may be recovered back by the assignee.

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 indorser 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, and 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 in the office of the county court registrar of the district wherein the goods affected are situate; where the goods are situate in the same town or place as the county court registry, the bill of sale must be registered within five days after execution; in other cases, within twenty-one days. The time for registration may be extended by a judge on good cause being shown. An affidavit of the transferee or mortgagee in the statutory form must also be filed at the same time, stating that the instrument is given and taken *bona fide*, showing the actual consideration and declaring that it is not intended to defeat or delay other creditors or to protect the mortgagor or transferor; 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. The holder of a registered bill of sale or chattel mortgage must, within fifteen days after service of demand by a creditor, furnish such creditor with a sworn statement showing the state of accounts secured by the bill of sale or mortgage, otherwise the bill of sale or mortgage is void as against such creditor.

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 frequently charged, according to circumstances. (See *Solicitors*.)

Commercial Travellers. (See *Licenses*.)

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, \$287.50; \$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).

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 mortgages 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), or under the British Columbia "Companies Winding Up Act."

Deeds given by Companies. (See *Acknowledgments*; see also *Powers of Attorney*.)

Conditional Sales of Goods. Receipt notes, lien orders, or hire receipts must be filed within twenty-one days in the office of the County Court Registrar of the district in which the goods are situate, 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, dur-

ing 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. A copy of the receipt, lien order or hire-receipt must also be left with the vendee. Goods held under a conditional sale agreement are subject to distress for rent due by the purchaser, to the extent only of the interest of such purchaser in the goods.

Contracts. (See *Frauds, Statute of.*)

Conveyances. (See *Acknowledgments, Deeds.*)

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 to \$50.

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 \$60, it may be transferred to the county court, and execution issue thereout against the real estate of the judgment debtor. Before or 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 pretences 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 value of the premises does not exceed \$2500; in replevin where the goods do not exceed \$1,000 in value; 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 "speedy judgment."*) In the county court, as in the supreme court, execution may issue only against goods, but the judge may order defendant's lands to be sold where judgment is over \$100. (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 before or after judgment; 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 liquidated demand and an appearance 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.*)

Creditors' Bills. (See *Accounts, Assignments.*)

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. 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.*) Undivided 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 foregoing, 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 deceased 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.

Under the "Workmen's Compensation Act" (which came into force May 1, 1903), workmen may recover from their employers compensation for death or injury resulting from accident arising in the course of the employment, and not caused by the workman's serious or willful misconduct or negligence. The compensation, in case of death, is limited to three years' wages or \$1,000, whichever is larger, but in no case exceeding \$1,500; in case of total or partial incapacity it is limited to 50 per cent of the claimant's average weekly earnings during the previous twelve months, not to exceed, however, \$10 per week or \$1,500 in all.

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 or county 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, 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; 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) in priority to the claim of the execution creditor. 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, and if he is shown to be able to pay the judgment, he can be imprisoned for non-payment. (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, nor to the stock in trade of a trader. Lands, duly registered as a homestead, are exempt to the value of \$2,500. (See *Homesteads, Garnishee.*)

Factors. (See *Agents.*)

Foreign Corporations. (See *Companies.*)

Foreign Judgments. (See *Judgments.*)

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, or that an action is pending, verifying the debt, and stating that any other person is indebted to the judgment debtor, and is within the jurisdiction of the court. Debts due to defendant may be thus 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 \$40.

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 necessities 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.

Injunctions may be obtained in supreme or county court, either before or after the hearing of a cause, upon showing, by affidavit, a proper case for interference by the court, such as that the party applying will, unless an injunction be granted, be damaged in such a way that he cannot be adequately compensated by damages. In urgent cases, an injunction may be obtained without previous notice to the opposite side, but only for a limited time, subject to extension on subsequent application, upon notice to the opposite side.

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 5 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 5 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 are valid for twenty years. They 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.

Jurisdiction. (See *Courts.*)

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, as consideration is then presumed. 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; and every commercial traveller representing principals not resident in this province is required to pay a provincial license of \$100 per six months in the case of liquors or cigars, and \$50 per six months in all other cases.

Liens, Mechanics'. Unless otherwise agreed in writing, every contractor, sub-contractor, and laborer doing or causing work to the amount of \$30 or upwards, to be done upon any building, wharf, bridge, mine, or other work, and any person furnishing materials to be used in the construction or alteration of such building, etc., 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 or materials. The lien must be registered within thirty-one days after the work is completed, or the claimant has ceased to work thereon (except in the case of miners, who are allowed sixty days), 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, and on the lumber manufactured therefrom, 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 lien-holders 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 therefor, 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*.)

Notaries Public are appointed for the whole province by commission from the lieutenant-governor in council, during pleasure, which is usually tantamount to a life appointment.

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

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 of Titles for the district, 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 Dominion 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*.)

Records. (See *Land Registry*.)

Redemption. Mortgaged property may be redeemed up to time of actual sale, under power of sale or decree of court, upon payment of all arrears of principal and interest, together with costs of proceedings. Lands sold for taxes may be redeemed within one year, if within incorporated municipalities, and two years in unincorporated communities, upon payment of arrears, interest, and costs.

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 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 Execution, 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.

Service. (See *Actions*.)

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. (See *Collections*.)

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 ranging from 1½ per cent to 10 per cent, depending on the value of the estate and the degree of relationship of the inheritors.

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.

Suits. (See *Actions*.)

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 \$500, 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 thereon. The rate of taxation is 1 per cent on real estate, 1 per cent on personal property; on income from 1½ to 3½ per cent, according to amount of income, on a sliding scale basis; if paid before June 30th a rebate is given of 10 per cent. 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 each 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, (and see "Licenses.")

Testimony. (See *Commissions to take Evidence; also Evidence*.)

Transfer of Corporation Stock must be effected in the manner fixed by the by-laws of the corporation.

Trust Companies are not the subject of any special legislative provisions in this province.

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 his 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, GALT, TUPPER, MINTY & McTAVISH, Barristers, Winnipeg. (See *Card in Attorneys' List*.)

Acknowledgments. (See *Deeds*.)

Actions. In the county court a defendant served within the Province 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 king's bench the defendant has sixteen days to file his defense if served within the Province, four weeks if served in any other Province or in the United States, eight weeks if within the United Kingdom or Newfoundland, and twelve weeks if within any other country, 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 or 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 His 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 His Majesty's dominions without Manitoba with the seal of the court affixed. 5. A consular agent of His 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 bankruptcy or insolvency law in force in this Province; but debtors may make assignments under the Assignment Act in trust for the general benefit of their creditors. Such assignments take precedence of all attachments, judgments, registered certificates of judgment, and of all executions not completely executed by payment, subject to the lien, if any, of execution creditors for their costs. Notice of an assignment must be published in the *Manitoba Gazette* and at least twice in a local newspaper. The assignee must, within five days from the date of assignment, convene a meeting of all creditors, as shown by reference to the debtor's books, for the appointment of inspectors and the giving of directions with reference to the disposal of the estate. He must also call a meeting to be held within twelve days after receiving a request for the same from a majority of the creditors. The creditors' claim must be proven by affidavit within a limited time. All questions discussed at meetings of creditors are decided by the majority of votes and for such purpose the votes of creditors shall be calculated as follows: Every claim of over \$100 and under \$200, one vote; every claim of over \$200 and under \$500, two votes; every claim of over \$500 and under \$1,000, three votes; for every additional \$1,000 or fraction thereof, one vote. At any meeting the creditors may vote in person or by proxy authorized in writing. Workmen's wages, not exceeding three months' salary, are to be paid in priority to claims of ordinary creditors. The assignee is to pay a dividend within six months of the date of the assignment and thereafter every six months until the estate is wound up. Inspectors may require assignee to pay dividends more frequently. Each creditor is entitled to a copy of dividend sheet as soon as same is prepared. The accounts of the assignee are, at all times, to be accessible to creditors.

Attachments. An order for attachment may be obtained in an action commenced by statement of claim, against any benefit, estate or interest in any real or personal property not exempt from seizure under execution or from liability to answer a judgment upon such cause of action in the following cases: 1. When any debtor or other person, being an inhabitant of Manitoba, shall depart therefrom 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 said 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. 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, may be had at the commencement of or at any time during the pendency of suit, or after judgment. A judgment requiring a person to do or abstain from doing anything except the payment of money may be enforced by mandamus.

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, if attacked within sixty days, or if assignment is made for the benefit of creditors within sixty days, are presumed prima facie to have been made with fraudulent intent, notwithstanding pressure.

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. On application of one-fifth in value of the shareholders a judge may appoint an inspector to investigate the affairs and management of the company and to report to the judge thereon. Insolvent companies are wound up and assets distributed under the provisions of the winding-up act, by the court of king'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, and may then hold lands. Corporations doing business in the Province have to pay a tax as provided in the Corporations Taxation Act, and must have an agent within the Province authorized under power of attorney to act in all legal proceedings on behalf of the corporation.

Courts. The court of king's bench is the supreme court of Manitoba, and has an original and appellate jurisdiction both at law and in equity. A court of appeal has recently been constituted to dispose of appeals from the court of king's bench. Its judges are *ex-officio* judges of the court of king's bench. 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 king's bench. An appeal lies from the county court to a single judge of the court of the king's bench, when the amount in dispute is not less than \$20 and not more than \$50; and to the court of appeal 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 king's bench, the registrar or deputy registrar of the district 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 his majesty resident therein, or a judge of a court of record or a notary public, certified under his official seal. No witness or affidavit is necessary in cases of execution by a body corporate, provided the corporate seal is affixed to the instrument and same signed by two of the principal officers. 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. In case of a commission from a competent foreign court to take evidence, or examination in discovery of persons resident in Manitoba, for use in suits outside the Province for the court of Kings Bench may order the attendance of witnesses, production of documents, and give directions in accordance with the tenor of the commission.

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 or mother to his brothers and sisters in equal shares; or if any of his brothers or sisters be dead their children take the parent's share; all these falling to his next of kin but in no case are representatives admitted among collaterals after brothers' or sisters' children. The separate property of a married woman dying intestate is to be distributed in the same manner as the property of a husband dying intestate. Real estate vests in the personal representatives since July 1, 1885, in the same manner as personal estate.

Divorce. Same as in Ontario.

Executions issue from the king's bench in all cases as of course against the goods of the judgment debtor at any time within six years from the date of recovery of judgment, and bind the goods from the date of receipt by sheriff as against the debtor or purchaser with notice or from date of seizure as against purchaser for value without notice, and must be renewed every two years. Lands are bound by the registration of a certificate of judgment in the registration division where the lands are situated, which must be renewed every two years. Executions from the county court remain in force for twelve months, and bind goods only, but may be renewed and may be exchanged for a king's bench execution after being returned as uncollectable by the county court bailiff. All executions in the hands of the sheriff at the date of seizure, or which are received by him within three months after such seizure, share ratably in the distribution of the amount realized. All shares and dividends of stockholders in any incorporated bank or other company in Manitoba having transferable joint stock and the interest of a mortgagee in any property mortgaged to him may be attached, seized and sold.

Exemptions. The following personal and real property are free 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 and his family, and also household furniture and effects not exceeding in value \$500. 2. The necessary and ordinary clothing of debtor and his family. 3. Twelve volumes of books, books of a professional man, one axe, one saw, one gun, six traps. 4. The necessary food, if in possession of the debtor at the time of 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 same during eleven months. The exemption as to horses over the age of four years shall apply only in case they are used by the judgment debtor in earning his living. 6. The tools, agricultural implements, and necessaries used by debtor in practice of his trade, profession, or occupation to the value of \$500. 7. The articles and furniture necessary to performance of religious services. 8. The land upon which debtor and his family actually reside, or which he cultivates or uses, provided the same does not exceed 160 acres, if outside the limits of any city or town. 9. The houses, 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 or town, provided the same does not exceed in value \$1,500; if it exceed the above value, before it can be sold, the said amount must be paid or secured to the debtor. The above exemptions only apply to debts contracted since May 2, 1885. All debts due or accruing due prior to that date are governed by the exemption act in force at the time such debts were contracted, and which was not as liberal to the debtor as the present law. Any agreement by debtor to abandon or waive exemption is null and void. Partnership firm can claim only one exemption. Remedy against real property is now more generally by registered judgments, under which no proceedings may be taken against 8, 9, 11, so long as the land is affected by the conditions recited.

Garnishment. All debts, obligations, and liabilities due, owing, or accruing due to a debtor may be attached to answer the claim of his creditor. Debts may be garnished both before and after judgment. In the court of king's bench a garnishing order can not be obtained until an action has been commenced; in the county court the garnishee proceedings 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 to the extent of \$25, or if less than one month be due, at the rate of \$25 a month. Garnishee must reside within this Province.

Interest. The legal rate is 5 per cent. Parties may contract for any rate, except banks, which are prohibited from charging more than 7 per cent. Interest is computed on judgments from date of entry at 4 per cent per annum. Rests not allowed unless there is a contract in writing. Accounts bear interest at legal rate from date of demand of interest or notice that it will be charged.

Judgments remain in force ten years. Suit can be brought upon foreign judgment, but defendants can set up any defense which could have been set up in the foreign court to the original cause of action, even though he was personally served with process of the foreign court and appeared and pleaded thereto. Foreign judgment is barred after six years. No action or suit can be brought upon a judgment recovered upon a judgment. (See *Executions*.)

License. (See *Corporations*.) The liquor traffic can only be carried on under license. Numerous businesses are the subject of municipal license for police or revenue purposes.

Liens. Parties erecting or repairing building or furnishing material for building have a lien on such land and building to the value of their work, provided a statement of the claim, verified by affidavit, is filed in local registry office within thirty days of completion or of furnishing of material. Proceedings must be taken to enforce lien within ninety days from completion of work, otherwise lien lapses. Proceedings are governed by the Mechanics' and Wage Earners' Liens Act, which is practically the same as in Ontario.

Limitation of Suits on contract, not under seal, written or parol, within six years after cause of action accrued. Upon specialties, within twenty years after cause of action accrued. If party entitled to sue is under disability or beyond seas, then within six or twenty years from date of removal of disability, as the case may be. Recovery of real estate, ten years. Case taken out of statute, by part payment, or acknowledgment in writing.

Married Women since 14th day of May, 1875, retain all property owned by them at date of marriage, or subsequently acquired for their own separate use, free from the debts or control of husband, but such property is liable for their own separate debts and contracts, and may be sold to satisfy same. In every respect, wife is considered separate from her husband; she may carry on business in her own name, and deal with her property, and sue and be sued in the same manner as if she were unmarried. Her property is not liable for any of the ordinary or necessary expenses of the family, unless specially charged by her. A man may convey land to his wife, and vice versa, without the intervention of a trustee.

Mines and Mining. The mines act of 1897 deals with this subject. Miners' licenses may be obtained for \$5. Locations may be made anywhere on crown lands not already occupied under license. Locations are limited to 660 feet along the lode or vein by 330 feet on each side. Syndicates may occupy up to 20 acres.

Mortgages are executed in the same manner as deeds and are governed by same laws as to registration in the local registry offices, and as to priorities. Tacking prohibited by statute. Foreclosure or sale proceedings taken in the king's bench; there is no redemption after final order for foreclosure or sale. Chattel mortgages and bills of sale must be filed within 20 days from the date thereof, with the clerk of the county court within which county the goods are situate, before they have any effect as against execution creditors, or purchasers for value without

notice, or subsequent chattel mortgages. They require to be renewed within thirty days of the expiration of two years from the date of filing, by filing a statement verified 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. Chattel mortgages, etc., on rolling stock, etc., of railroads are registered only in office of Provincial Secretary.

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, Arbor Day, 24th May, 1st July, Labor Day, the king's birthday, 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 has four Surrogate Courts: of the Eastern Judicial District, of the Central Judicial District, of the Western Judicial District, and of Southern Manitoba. The seats of the courts are Winnipeg, Portage la Prairie, Brandon, and Morden, respectively. 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 or a trust company, such as National Trust Company, Limited, appointed.

Suits. (See *Actions, Courts*.) There are two superior courts, the court of appeal and the court of king's bench, which have 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, including power to grant injunctions. 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 further six months from date of service of notice of such application upon him to redeem through the district registrar.

Transfer of Corporation Stock. Record of all transfers of stock should be kept in the corporation stock book and such transfers are only valid after entry, except as rendering transferee liable ad interim with transferor.

Trust Companies. These may do business in Manitoba subject to certain restrictions and supervision by the government. They are much favored on that account where the courts desire to safeguard the interests of estates, and recourse is now generally had to them in all cases where their services can be availed of. Companies now doing business as such in Manitoba are the National, the Royal, the Toronto General, the Standard, the Northern.

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 feme sole. Her will must be executed in like manner as other wills. Every will must be in writing, and every will other than an holograph will must be executed and attested as follows: 1. It must be subscribed at the end thereof by the testator or by some person in his presence and by his direction. 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. A 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.

SYNOPSIS OF THE LAWS OF NEW BRUNSWICK

RELATING TO

BANKING AND COMMERCIAL USAGES.

Prepared and Revised by BARNHILL, EWING & SANFORD, Barristers at Law, Princess St., St. John, N. B. (See *Card in Attorneys' List*.)

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 his 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 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, under the seal of such mayor or chief magistrate; 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 his 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 or administration 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, the penalty of the bond being double the value of the personal estate. An administrator may, instead of obtaining two sureties, give bond of a guarantee company licensed to do business in the Province. 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, and filed with the executor or administrator, and no debt shall be paid or action brought therefor until this has been done. (*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 mortgagee 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 mortgagee, 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 bargainee, 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, ballor, 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. The head office within the Province of any incorporated company, whether incorporated under the laws of the Province or otherwise, shall, within the provisions of this act, be deemed the domicile or place of residence of the company within the Province.

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.

Claims Against Estates of Deceased Persons. (*See Administration of Estates.*)

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 in tort and \$400 in 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-judicial the next business 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 judgment 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 for the body. Memorials of judgment duly registered in the County Registry of Deeds bind any lands of defendant or his interest therein for five years when they may be re-registered 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.

Interest. Legal rate 5 per cent.

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, recognition 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. Adverse possession against the Crown must be sixty years to bar title of Crown.

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 or his deputy.

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.

Replevin. 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 given to father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law, where the estate does not exceed \$50,000. Save as above estates 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, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last mentioned brother or sister, or to a grandchild or other descendant of the deceased, except a son or daughter, five 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. Where deceased had life insurance, whether payable to himself or any other person, same shall be deemed part of his estate for the purpose of this act.

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. Preference to the extent of three months' wages is given to persons in the employment of the debtor at the time of or within one month prior to: (1) Assignment for benefit of creditors. (2) Winding up under Provincial act. (3) Decease. (4) Seizure under execution. (5) Seizure under Absconding Debtors' act. (6) Foreclosure of railway trust mortgage. (*See also 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 ALFRED WHITMAN, Esq., Barrister, Halifax.
(*See Card in Attorneys' List.*)

Accounts. An account does not carry interest except by special contract in writing or custom of trade.

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 in actions for debt or liquidated demand is from \$20 upward; of the county court, in actions for debt or liquidated demand from \$20 to \$800. The county court has no jurisdiction in any action: 1. Where the title to 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. The county court has jurisdiction in all personal actions in contract where the debt, demand, or damages claimed, whether on balance of account or otherwise, do not exceed \$800, and in all other actions where the damages claimed do not exceed \$400. In all actions for damages the supreme court has jurisdiction whatever the amount of damages may be. 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 properly 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 deceased was a married woman, to her husband except in certain specified cases. 3. 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 vicé-consul exercising his functions, notary public, certified under his hand and official seal, mayor or chief magistrate of any incorporated town, 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 subpoena and punish for disobedience of subpoena. 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 that deponent has probable cause for believing and does believe that the defendant unless he is arrested 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 may 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 absconding or absent out of 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, in actions to recover \$80 and upwards, and \$25 in actions for less. 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 appraisal; 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 and 63 64 Vict., C. 26) passed in the year 1890 and in the year 1900, respectively, and cited as the bank act and "The Bank Act Amendment, Act 1900." The provisions of the act apply to the thirty-four banks mentioned in schedule A to the last mentioned 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, excepting certain enactments relating exclusively to the Province of Quebec.

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, or a true copy thereof, and every schedule annexed or referred to in such bill of sale, shall be filed in the registry of deeds for the registration district in which the grantor resides, or if a non-resident of Nova Scotia, in which chattels are situate, and must be accompanied by an affidavit of bona fides. Bills of sale, as against purchasers and creditors have effect from time of filing only. The statute prescribes forms of affidavits of bona fides, which must be followed. A renewal statement and affidavit shall be filed within 30 days next preceding the expiration of the term of three years from (a) the filing of every bill of sale or copy, and (b) the filing of every renewal statement and affidavit or amended renewal statement, otherwise such bill of sale shall cease to be valid as against creditors of the grantor and subsequent purchasers. A form of renewal statement and affidavit is prescribed by statute, which must be followed.

In addition to the above enactments, two classes of bills of sale are dealt with by statute: 1. Bills of sale 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 indorsement 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. These must fully set forth by recital or otherwise the terms, nature, and effect of the transaction and be accompanied by an affidavit of the truth of the recital and of bona fides. 2. Every hiring, lease, or bargain for the sale of personal chattels, accompanied by an immediate delivery and followed by an actual and continued change of possession, whereby it is agreed, (a) that the property in the personal chattels; or (b) in case of a bargain for sale, a lien thereon for the price thereof or any portion thereof, shall remain in the person letting to hire, the lessor or bargainor until the payment in full of the lien, rental, or price agreed upon by future payments or otherwise. These must be by instrument in writing and signed by the parties thereto, and must contain the terms of the transaction, the lien and amount payable, and must be accompanied by an affidavit as above.

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.

Conveyances. (See Deeds.)

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.

Costs. Costs in action are in the discretion of the judge, but generally are allowed to successful litigant.

Courts. (See Actions.)

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, a barrister of the supreme court, a commissioner of the supreme court, 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 or recorder of any city or incorporated town, by a minister, consul, vice-consul or consular agent of His Majesty, 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. 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, and without notice, 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 of the intestate living at the time of his death to the other lineal descendants of such intestate, 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. If he leaves issue, one-third of such property shall go to his widow; 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.

Evidence. No person is an incompetent witness by reason of incapacity from crime or from interest, except in case an action is brought by or against an executor or administrator, when it is necessary that the evidence of the opposite party should be corroborated. Witness may affirm if oath is not binding on his conscience. If opposite party consents evidence may be given by affidavit, or without such consent the judge may receive affidavit, but this is rarely done, witnesses being ordinarily examined *in voce*. The principles of common law apply. Husband or wife of a party is a competent witness, but not compellable as to confidential communications made during marriage. There are statutory provisions with regard to the admission of documentary evidence, incorporation of foreign companies and the like. In any action or proceeding, by or against the heirs, executors or assigns of a deceased person, an opposite or interested party to the action shall not obtain a verdict, judgment, award or decision thereon, on his own testimony or that of his wife, or both of them, in respect of any dealing, transaction or agreement with the deceased, or of any act, statement, acknowledgment, or admission of the deceased, unless such testimony is corroborated by other material evidence.

Execution. Writ of execution (*feri 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. No writ of execution shall bind the goods of the defendant but from the time the writ is delivered to the sheriff to be executed, and a levy may be made under it at any time, and after levy and due advertising the property shall be sold, subject to the provisions of "The Creditor's Relief Act" (3 Edw. VII., Ch. 14). There shall be no priority among creditors in the distribution of proceeds of personal property taken under execution from the supreme court or county courts. 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 or 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 cause to be inserted by

five consecutive weekly insertions preceding the day of sale, in one newspaper which is published, or if none is published, in one which circulates in the county in which the land is situated, an advertisement of sale, and shall also advertise by posters for twenty days, 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 his 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. Wages up to \$40 cannot be garnished, also debts due from the government.

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.*)

Injunctions. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had. An injunction may be granted in all cases in which it shall appear to the court to be just or convenient; it may be either unconditionally or upon such terms as the court may think just. If the court thinks fit, an injunction may be granted before, at, or after the hearing of any cause, to prevent any threatened waste or trespass, whether the person against whom the injunction is sought is or is not in possession, or does or does not claim a right to do the act sought to be restrained under any color or title, and whether the estates claimed by both or either parties are legal or equitable. If a mandamus or injunction be not complied with, the court or judge may direct the required act to be done, as far as practicable, at the cost of the disobedient party. No cause or proceeding at any time pending in the supreme court shall be restrained by injunction.

Insolvent Law. The Assignments Act provides that all confessions of judgment, gifts, conveyances, transfers, etc., given by persons in insolvent circumstances with intent to hinder or delay any of their 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 employees 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 none is voted by the creditors, then by a judge. Copies of assignment must be filed in registry of deeds of county where insolvent resides, and notice of the assignment must be published in *Royal Gazette* and local newspaper.

Insurance. No company may engage in banking or insurance business unless specially authorized to do so by its act of incorporation, and if any unauthorized company or corporation does engage in insurance or banking business, its charter shall be thereby rendered void. Insurance corporations are to make annual returns to the office of the provincial secretary.

Interest. Legal rate, 5 per cent. A contract may be made in writing for any rate when the security is real or chattel real, or for any rate where the security is personal property or personal responsibility, except in the case of banks, who may not charge more than 7 per cent. Judgments bear interest at 6 per cent.

Judgments. (See *Executions.*)

Jurisdiction. (See *Actions.*)

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 released.

Notaries are appointed by the government of Nova Scotia and have power to take protests.

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

Partnerships may be general or limited. Limited partnerships are created under statute, and there must be at least one general partner. Declaration of partners, showing interest of special partner, amount of his liability, names of partners, duration of partnership, and the like, must be filed in the registry office and published in newspapers.

Powers of Attorney to execute a document under seal 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.

Service of Summons must be personal, except in special cases, where judge may order substituted service.

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 A. F. LOBB, 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.

Account and Claims of. In sending in accounts against estates of debtors, they should be furnished by items stating credits and verified by affidavit of creditor or authorized agent of creditor, sworn before a notary public. Necessary vouchers should be attached to account.

Acknowledgment. To take a debt out of the statute of limitations a payment on account or an acknowledgment in writing is required. This acknowledgment must be in such terms as to amount to an admission of the existence of the debt, and promise to pay same.

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 both 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. If the justice by writing objects thereto within six days after the notice of action which is required to be given in such actions is served upon him. 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*.)

Administration of Estate. Administration is granted by the judge of the surrogate court of the county in which the deceased had his last place of abode. It is granted to the next of kin. A creditor may apply for administration. Letters cannot be granted until after an interval of fourteen days from the death.

Affidavits. Affidavits made in the United States or any foreign country, to be used in any of the courts in Ontario, may be made 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, or before the mayor or chief officer of any city or town or before British consul or vice-consul.

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.

Agreements where possession passes without ownership. In case of an agreement for the sale or transfer of merchandise of any kind to a trader for the purpose of resale, possession to pass but not ownership, any such provision is void against creditors, mortgages or purchasers, unless the agreement is filed in the office of the County Court Clerk within five days from the delivery of possession. This provision does not affect purchases in ordinary course of business.

Aliens. Every kind of real and personal property may 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, or by payment into court of \$200. In the county courts, security is required to the extent of \$200, or by payment into court of \$100. In cases where debt is ascertained by the signature of the defendant, the security required is \$50 on motion for speedy judgment. (See also *Judgments*.)

Arbitrations. Arbitrations are now governed by the revised statute respecting arbitrations. A submission is irrevocable, unless there is a contrary expression therein, except by leave of the court. Arbitrators are allowed three months to make their award. The court has power in certain cases to appoint an arbitrator.

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 attachments, executions, judgments, except judgments for alimony duly registered in Registry office against the lands of the defendant. Garnishee orders, receiving orders by way of equitable execution are also superseded by an assignment (Ontario, Acts 1903). 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 by the debtor 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 shown to have been made under pressure by the preferred creditor.

Attachment. A resident in Ontario who, being indebted to any other person in a sum exceeding \$100, 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 by 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.

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 passed in the year 1890, and cited as the Bank Act. The provisions of the act, which was amended in 1900, apply to the thirty-

six banks mentioned in schedule A to the act. The act, as amended in 1900, continues the charters or acts of incorporation of said banks until July, 1911, 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 upon deposit of \$250,000 with finance minister. 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 as security, 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. By the amendment of 1900 banks may lend on standing timber. By the same amendment one bank may purchase the assets of another bank. Shareholders upon winding up are subject to double liability on their shares. The note issue must not exceed the unimpaired paid up capital.

Bills of Exchange and Promissory Notes. No stamp duty is required to be paid on bills, notes or checks. Three days grace are allowed. (See *Days of Grace*.) 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. 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, Victoria Day (24th May), Dominion Day (1st July), Labor Day (3d September), King's Birthday, and any special days appointed by proclamation for public holidays, fasting or thanksgiving. The legal rate of interest is now 5 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 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, is 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 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. An affidavit of good faith showing that the bill of sale or chattel mortgage is not made for the purpose of defrauding creditors must be made by the vendee or chattel mortgagee before the bill of sale or chattel mortgage can be filed. Renewal statements verified by similar affidavit filed during the last month of each year of their currency are required to preserve their effect. When a chattel mortgage is made to a company the affidavit of good faith must be made by the president, vice-president, manager, assistant manager, secretary or treasurer, or other officer, duly authorized by resolution of the directors. An officer or agent must state that he has "personal knowledge of the facts deposed to."

Claims against Estates of Deceased Persons. Where a person dies intestate, letters of administration may be granted by the surrogate court. (See *Administration of Estate*.) 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*.)

Collaterals. Chattel mortgages are frequently given as collateral security for advances. In dealing with collaterals parties must be careful not to prejudice their main or original security. They are expected to realize on the main security to the best advantage before proceeding on their collateral security.

Commissions are granted by order of a judge for taking the depositions of a witness or party litigant in a foreign country, or when dangerously ill, though resident in the Province, or about to quit the Province, or whenever it may seem just. The court gives full directions as to the execution of the commission.

Contracts. Contracts for the sale of lands or an interest in land must be in writing, signed by the party to be charged. The provisions of the statute of frauds are in force in Ontario, modified by the act respecting written promises and acknowledgments, which extends the statute of frauds in cases of contracts for the sale of goods of the value of \$40 and upward to contracts for goods to be delivered at a future time.

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*.)

Conveyances. (See *Deeds*.)

Creditors' Bills. (See *Accounts above*.)

* 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.

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 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*.)

Depositions. Witnesses examined under a commission from a court must be examined under the directions given by the commission. In ordinary cases depositions may be taken before a notary public, and will be signed by the party, and his signature will be verified by the notary.

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. (See *Dower*.)

Distress. (See *Exemptions*.)

Divorce. In Ontario there is no divorce court, and a divorce can only be obtained at Ottawa by a private act of parliament from the Dominion. The causes are the same as those allowed by the law of England. American divorces are recognized by the courts of Ontario as legal and binding when obtained in a court having jurisdiction and without fraud or collusion, and according to the law of the domicile of the parties.

Dower. When there is no issue of the marriage surviving the father, the widow is entitled to \$1,000 of her husband's estate and over that amount to her share in the residue. In all other cases she is entitled to her common law right of dower, and in all cases she is allowed to take a sum in gross or distributive share instead of her common law dower being one third of the estate where there are children, and one half where there are no children, after payment of debts.

Employers' Liability for Damages. By Act regulating employers' liability for damages, notice of claim must be given within twelve weeks; action brought within six months; limit of liability, \$1,500.

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.

Executions are issued by the division, county, and high courts within their respective jurisdiction. Writs against goods and lands are concurrent and run for three years, and can then be renewed. Patent rights may now be sold under execution—Ont. Acts, 1903. Rights under Trade Marks are apparently not salable under execution.

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.

Foreign Corporations. Foreign corporations cannot as a rule do business in Ontario without payment of a license fee and complying with the laws of the Province or of the Dominion as to corporations. Contracts of foreign corporations are adjudicated upon in the same manner as if they were the contracts of domestic corporations.

Foreign Judgments. (See *Judgments*.)

Fraud vitiates everything. Reasonable diligence after discovery of fraud is required in order to prosecute a claim successfully.

Garnishment. In the high court and county court garnishment is effected by attachment of debts under order of court. In the division court garnishment is effected by service of the original summons upon the garnishee. Wages are protected from garnishment unless the sum be for wages amounting to \$25, and then only to the extent of the excess. If the debt is for board or lodging, and the debtor is an unmarried man, or if married and the judge thinks the exemption unnecessary, then there is no exemption.

Guarantee Companies are incorporated to secure the integrity of public officers or persons occupying positions of trust. They are accepted by the surrogate court if approved of by order in council.

Hire Receipts and Sale Notes. Except in the case of household furniture, other than pianos, organs or other musical instruments, to be valid as against subsequent purchasers or mortgagees without notice, these documents on sale of manufactured or unmanufactured goods 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 or bailor 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.

Holidays. In Ontario, the legal holidays are Sunday, New Year's Day, Good Friday, Easter Monday, Victoria Day (24th May), Dominion Day, Labor Day, King's Birthday, Thanksgiving Day. Any act that is required to be done on a holiday may be done on the next day succeeding.

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

Injunction may now be granted by a county court judge as well as by the high court. When granted by county court it remains in force for eight days, and the matter is then dealt with by the high court.

Insolvency. There is no insolvency act in force. (See *Assignments*.)

Insurance Companies may be licensed by the Ontario Government. Application for information is recommended to Inspector of Insurance, Parliament Buildings, Toronto, who furnishes forms, etc., on application.

Interest. Five per cent is the legal rate, except as to securities in force on 7th July, 1900. Banks can not recover more than 7 per cent for interest or discount. 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. But see the Dominion Moneylenders act passed in 1906, 6 Edward VII, Chapter 32, limiting rate of interest to 12 per cent per annum on negotiable instrument, contracts, or agreements concerning loans of money under \$500, and to 5 per cent after judgment.

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; otherwise foreign judgments may be attacked for fraud or want of jurisdiction in the court in which judgment was obtained. 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.

Jurisdiction. (See *Courts*.)

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.

Licenses. Provincial licenses are required to sell liquor and to marry. Municipalities license pedlars, etc.

Liens. (See *Mechanics' Liens*.)

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, or from last payment thereon or written acknowledgment. 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. Judgments remain in force for twenty years and can be kept renewed.

Loan Corporations. Investments by in stocks and call loans which were allowed by Dominion legislation have been regulated by Ontario Acts of 1903, Chapter 16. Such companies must be incorporated and cannot be carried on as "partnerships" or "unions."

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 *feme 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 *feme 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. 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. Payments made in good faith to contractors to the extent of 80 per cent (in the case of contracts of \$15,000 or over, 85 per cent) are a discharge of the liens *pro tanto*. 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 ninety days 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. By Ontario Act of 1903, in the case of mortgages for a term of more than five years, any person entitled to redeem may tender the principal with interest to date and three months' interest in advance and no further interest is then chargeable. 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.

Notaries are appointed by the lieutenant-governor, and must have a seal. They hold office during pleasure.

Notes and Bills of Exchange are governed by the Dominion law. (See *Bills of Exchange*.)

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.

Power of Attorney. May be general or special. If intended to affect land, must be verified by affidavit of execution in the same way as a deed, and must be capable of registry in the registry office. If intended to convey a particular parcel of land, such parcel must be described. A general power to convey lands would be registered in the general registry.

Preferences. (See *Assignments*.)

Probate Laws. A will is proved in the surrogate court of the county in which the deceased has his last place of abode. Affidavit of execution of will, etc., must be produced. If no executor is named in will, administration is granted with will annexed. Trust companies frequently act as executors, the original executors named in the will renouncing in their favor.

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

Proof of Claims. (See *Affirmations*.)

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.

Redemption. The mortgagor is entitled to redeem the property so long as it is held in specie.

Replevin. Replevin is now extended to all cases in which property is unlawfully taken or detained. A bond is required from the person replevying that the property shall be forthcoming in the event of the proceedings failing.

Revision. The statutes of the Province of Ontario were last revised in 1897, and will be revised in 1907. The revision of the Dominion statutes was last made in 1887. A new revision of the Dominion statutes is now completed.

Service. In actions, must be made according to directions given in the particular case. It may be made personally, substitutionally, or by advertisement. Affidavits of service must be sworn to before a notary public, mayor of a city, or British consul or vice consul or commissioner authorized to take affidavit for use in Ontario.

Succession Duties—Act of 1905. Where the aggregate value of the property of the deceased exceeds \$50,000 and passes to the father, mother, husband, wife, child, son-in-law, or daughter-in-law of the deceased:

- (a) Where the said aggregate value exceeds \$50,000 and does not exceed \$75,000, 1 per cent.
- (b) Exceeds \$75,000 and does not exceed \$100,000, 2 per cent.
- (c) Exceeds \$100,000 and does not exceed \$150,000, 3 per cent.
- (d) Exceeds \$150,000 and does not exceed \$200,000, 4 per cent.
- (e) Exceeds \$200,000 5 per cent.

Where the value exceeds \$100,000 and the amount passing to any one person above mentioned exceeds the amount next mentioned, a further duty.

- (a) Where the whole amount so passing to one person exceeds \$100,000 and does not exceed \$200,000, 1 per cent.
- (b) Exceeds \$200,000 and does not exceed \$400,000, 1½ per cent.
- (c) Exceeds \$400,000 and does not exceed \$600,000, 2 per cent.
- (d) Exceeds \$600,000 and does not exceed \$800,000, 2½ per cent.
- (e) Exceeds \$800,000, 3 per cent.

Where the aggregate value of the property of the deceased exceeds \$10,000 so much thereof as passes to the grandfather or grandmother or any other lineal ancestor of the deceased except the father and mother, or to any brother or sister of the deceased, or to any descendant of such brother or sister, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last mentioned brother or sister, \$5 for every \$100.

Where the value of any dutiable property exceeds \$50,000 and the amount passing to any one person last mentioned, except the father and mother, exceeds the amount next mentioned, a further duty shall be paid.

- (a) Where the whole amount so passing to one person, exceeds \$50,000 and does not exceed \$100,000, 1 per cent.
- (b) Exceeds \$100,000, and does not exceed \$150,000, 1½ per cent.
- (c) Exceeds \$150,000, and does not exceed \$200,000, 2 per cent.
- (d) Exceeds \$200,000, and does not exceed \$250,000, 2½ per cent.
- (e) Exceeds \$250,000, and does not exceed \$300,000, 3 per cent.
- (f) Exceeds \$300,000, and does not exceed \$350,000, 3½ per cent.
- (g) Exceeds \$350,000, and does not exceed \$400,000, 4 per cent.
- (h) Exceeds \$400,000, and does not exceed \$450,000, 4½ per cent.
- (i) Exceeds \$450,000, 5 per cent.

Where the aggregate value exceeds \$10,000 and any part thereof passes to any person in any other degree of collateral consanguinity to the deceased than is above described, or to any stranger in blood to the deceased, save as is above provided for, the same is subject to a duty of \$10.00 for every \$100 of the value. Where the whole value of any property devised, bequeathed, or passing to any one person under a will or intestacy, does not exceed \$200, the same is exempt from duty.

Suits. (See *Actions, Affidavit, Arrest, Attachment, Commission, Evidence, Execution, Exemption, Garnishment, Judgment, Replevin*.)

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.

Testimony. (See *Affidavits, Commissions, Evidence*.)

Transfer of Corporation Stock. Stock in a company is personal estate, and is transferable on the books of the company only. Directors may refuse transfer of stock whereof the whole amount is not paid in. All previous calls must have been fully paid, or the stock must have been declared forfeited for non-payment of calls. The mode of entry of transfers is generally fixed by by-law of the company.

Trust Companies. Trust companies are regulated by act of the Provincial Legislature. They must be incorporated under the Ontario companies act. At least three-fourths of the stock of company must be

held by persons resident in Ontario. Capital stock must be paid up to at least \$100,000, before the letters patent issue. Such companies are empowered to act in the management of estates, or as executor, etc.

Trustees are now allowed to invest in company stock where the amount of paid up stock is \$300,000—(Ontario Acts, 1903.)

Warehouse Receipts. Are defined by the bank act to mean any receipt given by any person for any goods, wares, or merchandise in his actual, visible, and continued possession as bailee in good faith, and not as of his own property. By the amendment to the bank act passed in 1900, "Warehouse Receipts" are extended to cover receipts for logs or timber. But by the Bank act, Sec. 74, receipts may be given by certain manufacturers, dealers etc. for goods, their own property, and stored on their own premises.

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.

"E. F., of Hamilton, merchant."

(Signed) "A. B."

The gift of 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. Change of domicile subsequently to the execution of a will, does not affect the validity of the will. 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. McLEOD & BENTLEY, Barristers, Charlottetown. (See *Card in Attorneys' List*.)

Accounts and Claims, Proof of. Accounts do not carry interest, but the court or a jury may allow interest on debts or sums certain at 5 per cent from the time such debts became payable, or from time the creditor makes a written demand of payment, notifying the debtor that interest will be claimed from the date of such demand. Claims are proved either by deposition taken under commission issued out of court when witness is unable to attend or is residing abroad, or by oral testimony in open court. A defendant may, before pleading, compel plaintiff to deliver items, with dates, of an account sued on. (As to proof of license to sell goods, see *Commercial Travelers*.)

Accounts Against Intestates' Estates. (See *Administration*.)

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. There is one surrogate and probate court for the Province with office at Charlottetown. In this court letters of probate and administration are granted and estates of deceased persons usually administered. In cases of intestacy administration may be granted to the widow or next of kin; or if they neglect applying for letters of administration for thirty days after the death of the intestate, administration may be granted to a creditor after first citing the widow and next of kin and their refusing to administer. 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 personality is insufficient to pay debts, executor or administrator may, by leave of the surrogate, sell the real estate. Estates of deceased persons may also be administered in the court of chancery, in which court lands are assets for the payment of debts in the event of the personal property of the deceased being insufficient. (See *Taxes*.)

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, Edinburgh, Glasgow, Halifax, St. John, Ottawa, Victoria, B. C., and Philadelphia for taking affidavits for the supreme court and for taking acknowledgments of deeds.

Aliens. Previous to confederation (A. D. 1870), aliens might hold real estate not exceeding 800 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.*)

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, and from that court to the Privy Council of Great Britain.

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. (*See Insolvency.*)

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.

Banks. The agent or manager of any bank established abroad carrying on business in this Province is to be assessed and taxed on the average volume of business done here, at the rate of one-fiftieth of one per cent. (*See Interest, Corporations.*)

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, Victoria Day (May 24th), Christmas Day, The Birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign, and if such birthday is a Sunday, then the following day, 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, Labor Day (the first Monday in September), day following New Year's, Victoria Day, or Christmas if these days fall on Sunday. Foreign bills must be protested, but inland bills do not require protest.

Bills of Lading are transferable by indorsement and delivery of the bill of lading by the shipper or owner to the indorsee. Vendor may stop goods in transit before their actual delivery to purchaser, in case of his insolvency. By Dominion bills of exchange act, banks are authorized to make loans on security of bills of lading or warehouse receipts, and may sell goods on default after due notice.

Carriers, whether incorporated companies or firms or individuals doing business between this Province and any other Province or country, are subject to a tax of \$100 a year.

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. Chattel mortgages or other conveyances or transfers (except such as are given for a present actual bona fide payment or advance of money, or made in consideration of any present actual bona fide sale or delivery of goods or other property) are void if given by a debtor in insolvent circumstances with intent to give an undue preference over other creditors or to prejudice or delay any of his creditors.

Collaterals may be given as security for debt and may consist of bills of exchange, bills of lading, warehouse receipts, etc.

Commercial Travelers, not permanently residing within the Province, selling or soliciting the sale of merchandise within the Province, must take out a license and pay an annual license fee of \$20. Any foreign commercial traveler soliciting the sale of liquor within the Province must pay an annual license fee of \$200. A foreign creditor bringing an action for the price of any goods sold by any such traveler to a person within the Province must, before he is entitled to recover judgment, prove the payment of such license fee, if the debtor puts him to such proof.

Contracts required to be in writing are: 1, negotiable instruments; 2, any promise by an executor or administrator to answer damages out of his own estate; 3, any promise to answer for the debt, default, or miscarriage of another person; 4, any agreement made upon consideration of marriage; 5, any contract of sale of lands or any interest in lands; 6, any agreement not to be performed within a year from the making thereof; 7, agreement for sale of goods, wares, and merchandise of value of \$32 and upwards, unless accompanied by acceptance and receipt of goods by buyer, or his giving something in earnest to bind the bargain or in part payment. Leases for three years and under may be made verbally. A

promise made after full age to pay a debt contracted during infancy must be in writing and signed. A representation as to character, credit, etc., made to enable another to obtain money or credit is not actionable unless in writing and signed by the party to be charged therewith. Contracts against public policy or morality are void. Persons incapacitated from contracting are infants, lunatics, persons of unsound mind. Married women may by contract bind their separate estates.

Conveyance. (*See Deeds, Married Women.*)

Corporations may be created by special Dominion or Provincial statute, or by letters patent issued under the Dominion or Provincial companies acts. The liability of shareholders is usually limited to the amount of shares subscribed, and when the shares are paid in full shareholders are discharged from further liability. Foreign corporations may do business in the Province and may bring action in the courts as if incorporated within the Province. Certain taxes are imposed upon foreign insurance and other companies transacting business within the Province.

Costs. No attorney's costs or counsel fee are payable or can be recovered against a debtor on any action brought in the county courts. (*See Courts.*)

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.

Creditors' Bills. There is no statute authorizing a creditors' bill for general discovery and in aid of common law execution, but statutes enable a judgment creditor to examine the judgment debtor on oath before a judge touching his estate and effects and as to the disposition he has made of his property since the debt on which judgment was recovered was contracted, and as to what property he still has and what debts may be owing to him. Proceedings to annul fraudulent conveyances by a debtor may be taken by bill in equity under the English statutes of Elizabeth. Conveyances and securities made or given by a debtor in insolvent circumstances with intent to give a preference to one or more creditors over other creditors may be impeached and annulled under a Provincial statute. A creditor may also file a bill in equity for administration of the estate of a deceased debtor. (*See Insolvency.*)

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

Deeds, Mortgages, and Conveyances of real property must be made under seal and should be registered in order to prevent a later grantee or encumbrancer from obtaining priority by prior registration. The execution of deeds must be proved before registry by the acknowledgement of the grantee or by the oath of a witness before the proper officer, and his certificate of such acknowledgment indorsed thereon. Commissioners for taking such acknowledgments to deeds are appointed within the Province, and in Boston, Chicago, New York, Montreal, Ottawa, Glasgow, London, Quebec, Halifax, Victoria, B. C., St. John, Edinburgh, and Philadelphia, and where there is no such commissioner the execution of the deed may be proved before a notary public, certified under his official seal. (*See Acknowledgment.*) A married woman of full age may convey her interest in land by deed executed with her husband and a proper acknowledgment apart from her husband before a justice of the peace or a notary public that same was signed by her of her own free will and consent had without any compulsion, and that she was aware of the nature of the contents thereof. Any separate property of a married woman acquired since 1896 may be disposed of by her as if she were not married. Powers of attorney executed by a married woman authorizing another to convey land must describe the land to be conveyed with a sufficient certainty. No more than one witness is necessary to the execution of any deed unless same is executed in pursuance of a power of appointment specially directing more than one witness to be necessary. A wife should join her husband in conveying land in order to bar her right of dower. (*See Dower.*)

Depositions may be made by oath or by affirmation or solemn declaration. Witnesses abroad may have their evidence in an action taken by commission before a commissioner to be appointed by the judge or court who grants the order for commission. Witnesses within the Province who are sick, aged, or infirm, may give evidence in an action on commission on a proper application being made for the purpose. (*See Affidavits.*)

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.

Divorce. By statute of the Colony passed in 1835, the lieutenant governor and council are constituted a court of divorce with power to annul marriages on the ground of impotency, adultery, and consanguinity within the prohibited degrees of the English statute, 32 Henry III, and for no other causes. Since the confederation of the provinces of the Domin-

ion jurisdiction over matters pertaining to marriage and divorce is vested in the parliament of Canada. No divorces have ever been granted in the Province under the provisions of the statute referred to.

Dower. A wife is entitled to dower by the common law, and by statute the right is extended so as to attach to the husband's equitable estate of inheritance in possession and to estates partly legal and partly equitable. She is also entitled to dower when the husband was entitled to a right of entry or action in any land in which she would have had dower had he recovered possession thereof. Where a wife of unsound mind has a right of dower in her husband's land, the land may be sold freed from her dower by order of a judge of the supreme court.

Evidence. In criminal actions a husband or wife may be a competent witness against the other, but not as to communications made to each other during marriage. In civil actions a husband or wife may be a competent witness against the other, but can not be compelled to give evidence against the other as to communications made by the other during marriage. Children of tender years not understanding the nature of an oath may give evidence, which must be corroborated by other material evidence before any case shall be decided on it. No disqualification arises through interest or crime. Evidence may be given on oath or by affirmation, where witness objects to taking an oath on ground of conscientious scruples.

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.

Foreign Corporations. (See *Corporations.*)

Foreign Judgments. The record of a judgment against a resident of this Province, obtained in any other province or country, is not conclusive evidence, in any suit to be brought on such judgment within this island, of the correctness of such judgment, but the defendant may dispute the facts or cause of action upon which such judgment is founded as fully as if such foreign judgment had never been given.

Fraud. Deeds obtained by fraud may be annulled by the court of chancery if impeached in due time and before innocent purchasers, for valuable consideration without notice of the fraud, have acquired rights. Judgments may also be set aside where obtained by fraud. (See also *Insolvency.*)

Frauds, Statute of. (See *Contracts.*)

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.

Guarantee as to Credit, Etc. (See *Contracts.*)

Guarantee Companies. (See *Insurance Companies.*)

Holidays. (See *Bills and Notes.*)

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

Injunctions. In an action for damages for breach of contract brought in the supreme court a writ of injunction may also be claimed to prevent the repetition, committal, or continuance of any injury arising out of such contract or relating to the same property or right. The court of chancery will grant an injunction in cases where it has jurisdiction, according to the practice of the court of chancery in England.

Insolvency. Although the Dominion parliament has jurisdiction to pass a general law applicable to the provinces in cases of bankruptcy or insolvency, no such law now exists. By a statute of the Province, when a debtor is in insolvent circumstances or unable to pay his debts in full, or knows himself to be on the eve of insolvency, and voluntarily confesses a judgment in favor of a creditor, or makes any gift, conveyance, assignment, transfer, delivery, or payment of goods or chattels, or of bills, shares, or other property, real or personal, with intent to defeat, hinder, delay, or prejudice any of his creditors, or with intent to give any of his creditors an unjust preference over his other creditors, such confession of judgment deed, gift, conveyance, payment, etc., shall, as against his creditors who are prejudiced, delayed, or injured, be utterly void; such transaction, if impeached within sixty days, shall be presumed to be made with such intentions, if the effect of such transaction is to give to a creditor a preference over others and whether the grantee has any knowledge of the grantor's insolvency or of his intent or not. This does not, however, invalidate any gift, conveyance, assignment, or delivery of any property or any security executed bona fide for a present actual bona fide payment in money, or for a present actual bona fide sale or delivery of property, if the money or property so paid, sold, or delivered bear a reasonable value to the consideration therefor. A debtor may make a general assignment for the general benefit of his creditors, ratably and without prejudice.

Insurance Companies. The following taxes have recently been imposed upon insurance companies: Upon fire insurance companies doing business in the Province, whose principal office or organization is not within the Province, \$150 each; upon foreign life insurance companies doing business in the Province, \$225 each; accident or guarantee insurance companies, \$50 each; accident and guarantee insurance companies, \$100 each; trust, loan, or building companies, \$225 each.

Agents from abroad canvassing for life insurance are liable to an annual license fee of \$100.

Interest. Parties may contract to pay interest at any rate agreed on. If no rate is mentioned, bills and notes carry interest after maturity at the rate of 5 per cent; but as to liabilities existing on and prior to July 7, 1900, the legal rate of interest, unless otherwise agreed, is 6 per cent. "Moneylenders" are prohibited from charging over 12 per cent per annum and interest shall be reduced to 5 per cent from the date of any judgment recovered for any amount lent.

Judgments. (See *Courts.*)

Jurisdiction. (See also *Courts.*) The county courts have jurisdiction in all actions *ex contractu* and *ex delicto* where the debt or damage claimed does not exceed \$150, except in the following actions: Detinue, replevin, or ejectment, or where the title of lands is brought in question, or in which the validity of any devise, bequest, or limitation is disputed; criminal conversation or seduction, breach of promise of marriage, actions against an executor or administrator, (but executors or administrators may bring actions in the said courts) or any action against a justice of the peace for anything done by him in the execution of his office, or any action upon a judgment in the supreme court. The supreme court has jurisdiction in all actions for \$32 and upwards.

Liens. Lien notes and hire receipts given for manufactured goods or chattels (except "household furniture," which, however, does not include pianos, organs, or other musical instruments) are not valid against subsequent purchasers or mortgagees without notice for valuable consideration, unless at the time possession is given to the bailee the name and address of the manufacturer, bailor, or vendor of the same is printed, stamped, or engraved thereon, or otherwise plainly attached thereto. But this does not invalidate any note, receipt, or instrument evidencing the bailment or conditional sale, which is filed within ten days from its execution with the prothonotary of the court in the county in which the bailee or purchaser resides.

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 for 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.

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.

Mortgages. (See *Deeds.*)

Notaries Public are appointed for the Province by the lieutenant governor, and have authority to take acknowledgments of married women, prove the execution of documents, protest bills of exchange and ships' protests, etc.

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

Partnerships. All persons residing within the Province, composing a partnership for the transaction of mercantile, mechanical, or manufacturing business in the Province, except banking or insurance, should sign a certificate of partnership, stating the name of the partnership, the names and addresses of the partners, the general nature of the business, and the time when the partnership commences and determines, which certificate is to be registered in the county wherein the business is carried on, with the prothonotary. No suit may be brought in any court in the Province until such certificate is registered.

Probate. (See *Administration.*)

Protest. (See *Bills and Notes.*)

Record. (See *Courts and Foreign Judgments.*)

Redemption of mortgages may be made at any time within twenty years next after the time at which the mortgagee obtained possession or receipt of the profits of the land, or within twenty years after an acknowledgment in writing of the title of the mortgagor or of his right of redemption has been given to the mortgagor or some person claiming his estate, or to the mortgagor's agent, signed by the mortgagee or the persons claiming through him.

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.

Service of writs out of the supreme and county courts may be made when the defendant is within the jurisdiction of the court by delivering a copy of the writ to the defendant personally, or such copy may be served at the usual place of abode of the defendant by delivering same to the wife of the defendant or to some adult person or inmate residing in the house of the defendant. Service of process on corporations may be made by delivering same to the mayor or other head officer, or town clerk, treasurer, secretary, or an accredited agent of such corporation.

Stockbrokers. (See *Taxes.*)

Suits. (See *Courts.*)

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. The real and personal property of a deceased person if exceeding \$3,000, are subject to a succession duty varying from $\frac{1}{2}$ per cent to $\frac{7}{8}$ per cent, according to the amount of the estate, and to what parties it passes. Stockbrokers with head office, without the Province doing any business here will be taxed \$150 a year. (See *Insurance Companies, Banks, Carriers.*)

Testimony. (See *Evidence and Depositions.*)

Transfer of Corporation Stock. Shares of stock are personal property and liable to be taken in execution. The method of transfer of shares is usually provided for by the act of incorporation or by the by-laws of the corporation or company.

Warehouse Receipts. (See *Bills of Lading.*)

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, MITCHELL & SURVEYER, 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. A married woman must be authorized by her husband before she can institute an action, and when she is sued, her husband must be also made a party to the action in order to authorize her to defend the suit. 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 \$15 to \$40. 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. Married women and widows may be described as defendants under the surnames of their husbands or deceased husbands respectively, adding the words "wife of" or "widow of" and a sufficient designation of the husband.

Affidavits. Within the Province must be taken before a judge or officer of the court, or before a commissioner of the superior court for the district where taken. In Great Britain and Ireland, before the mayor, a commissioner to take affidavits for use in Quebec, or a commissioner appointed by the Lord Chancellor to receive affidavits in England, or a notary public, under his hand and official seal. In British possessions, before the mayor, a commissioner to take affidavits for use in Quebec, or a judge of the superior court. In a foreign country, may be taken before the mayor or chief magistrate of any city, borough, or town under the common seal, or before any consul or consular agent of His Majesty, in office, or before a commissioner appointed to receive affidavits there, for use in the Province of Quebec. They can only be taken in connection with judicial proceedings, or in cases especially provided by statutes, otherwise officer receiving them is criminally liable. Solemn declarations before any officer authorized by law to administer oaths have the same force and effect in any but judicial proceedings.

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.*)

Arrest. (*See Attachment and Capias.*)

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. 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, 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 sequestration 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 \$50, but his property may be seized for a debt of \$5. To justify a *capias*, the debt must be a personal one, and created or payable within the Provinces of Quebec and Ontario. 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 *capias*ed, except after judgment in specified cases.

Banks. (*See Corporations, Interest.*)

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

Chattel Mortgages do not exist in Quebec. (*See Deeds and Mortgages, and Liens and Privileges.*)

Claims Against Estate of Deceased Persons should be filed with the executor appointed by the will of the deceased, or if no executor be appointed by the will, with the universal legatee, if one is named in the will, or with all of the legatees if no universal legatee is appointed. If there be no will, claims of creditors should be filed with the legal heirs of the deceased who inherit the property. The claims of creditors of the deceased take priority over all legacies. (*For Legal Heirs, see Succession.*)

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, but directors are liable for wages of employees within certain limitations. 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. 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. Corporations chartered outside of the Province are required to obtain a license before carrying on business in the Province and for such license a fee is payable to the government based on the amount of the capital of the company. They can hold real

estate to the same extent that domestic corporations can. Must be registered in the same manner as partnerships (see that word) under pain of penalty.

Courts. The circuit court has original jurisdiction where the amount demanded is less than \$100; the superior court where it is \$100 or upward. An appeal can be taken to the court of review and court of King's bench in all cases over \$100. An appeal can also be had from the court of King's bench to the supreme court of Canada, and to His 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 His Majesty is claimed by the action.

Dower. Legal dower which results from the mere act of marriage when there is no contract to the contrary, consists of the usufruct for the wife and the ownership for the children, of one-half of the immovables which belonged to the husband at the time of the marriage, and of one-half of those which accrued to him during the marriage from his father or mother or other ascendants. This right opens only at the death of the husband, unless the contract of marriage provides that there shall be dower, and that it may be exigible on separation of property being granted. The parties may stipulate in the contract of marriage that dower shall or shall not exist on the movable or immovable property of the husband. In order for the wife to preserve her right to dower, on property encumbered with it, against third parties, the dower must be registered. In the case of legal dower the registration of the marriage certificate, with the description of the immovable subject to it, is made in the registration division where the immovable is situated. In the case of conventional dower the registration of the contract of marriage is also required. It is practically useless to sue a woman who is married under the system of community of property. A woman who is separated as to property from her husband can be sued for debts contracted by her, but her husband should also be summoned in the cause. (*See Husband and Wife.*)

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 debtor 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 used 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 tumbrel, 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. All pensions granted by financial or other institutions to their employees, by means of retiring funds or pension funds established among the said employees as well as the instalments paid or to be paid to form such pension funds and to give a right to the benefits arising therefrom. 19. Contingent emoluments and fees due to ecclesiastics and ministers of worship by reason of their current services and the income of their clerical endowment. 20. Salaries of public officers, with the exception of those of public officers and employees 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. 21. Salaries of city or town clerks and of other municipal officers and employees and of city or town assessors in incorporated cities or towns, except as to the proportions mentioned in paragraph 20 hereof. 22. Four-fifths of the salary remuneration or earnings of members of the Corporation of Pilots for and below the harbor of Quebec for the pilotage of vessels. 23. 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 paragraphs 14 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 defence 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 defence 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 defence which might have been set up to the original suit may be made and pleaded to the suit upon such judgment.

Husband and Wife. Parties marrying may depart from the general laws of the Province governing their property, as regards rights created by marriage, by entering into a marriage contract, but they cannot do this after the knot is tied. In this contract they may revoke the law for themselves and may bind themselves by all kinds of agreements not contrary to public order or good morals, and the contract can not afterwards be altered or revoked. They can not in any way after marriage, when there is such contract, depart from the contract, even to confer benefits on each other. There is one exception to this rule; the husband may insure his life for the benefit of his wife or children, and such insurance can neither be seized by nor assigned to anybody else. If no marriage contract was entered into, the law of the country which at the time was the domicile of the husband governs. For instance, if a man married in the United States and at the time had no intention of leaving there, his right of property under marriage would be governed by the laws in force there at that time, even if he afterward came to this country; but if, when marrying, his intention was to settle in this country and make his domicile here, and he does so, the law of this Province would govern. 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. A wife, who is not a public trader, can not bind herself either with or for her husband, otherwise than as being common as to property; that is she can not become surety for her husband and bind her private property, but only her share of the community property, saving the rights of creditors who contract in good faith. 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. Every married person carrying on business must register in the office of the prothonotary of the superior court where he is carrying on business, the particulars of the financial relations between him and his wife, and whether common or separated as to property with his wife.

Interest. Any interest may be charged which the parties may lawfully agree upon. However, in loans of less than \$500, by a professional moneylender wherein the interest charged is more than 12 per cent per annum, the court may reopen the transaction and reduce the amount, and, in any event, give the debtor a delay to pay the interest. Moneylenders charging more than 12 per cent interest are liable to one year's imprisonment or \$1,000 penalty. If there is no agreement, or if the rate per annum is not mentioned, the law fixes the rate of interest at 5 per cent. 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.

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 of 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 non-payment 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. (See *Husband and Wife*.)

Mortgages and Registration. Mortgages affecting lands held under the French system must be passed before a notary public in this Province. Other deeds affecting such lands if executed in the Province should be passed before a notary public to allow of their registration in a convenient manner. If executed elsewhere, deeds, other than mortgages, affecting such lands, are valid if executed according to the laws of the place where they are passed, but the signatures to the same must be properly authenticated to admit of registration. 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 in the special statutes respecting 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.

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 indorsement and delivery, but they can not be transferred as security for an antecedent indebtedness.

Partnerships must be registered, as also must all persons carrying on business alone, under a name different than their own, in the office of the county registrar and the office of the prothonotary of the superior court in each county and district where they carry on business. If name of another is used as firm name, the word, or an abbreviation of the word, "registered" must be added after the firm name whenever used. Joint stock companies must be registered in the same manner. 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 declarations 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.

Succession. If a person dies intestate, his property devolves as follows: Children or their descendants succeed to their ascendants without distinction of sex or primogeniture, and whether they are the issue of the same or different marriages. If there are no descendants, then the parents get half the estate, and the remainder goes to the brothers, sisters, nephews, and nieces in the first degree. If there be no brothers, sisters, nephews, and nieces in the first degree, then the parents divide the estate equally between them, to the exclusion of all other ascendants; and if there be likewise no parents, then the succession is divided equally between the nearest ascendants of the paternal line and the nearest ascendants of the maternal line. If the parents have previously died, the brothers, sisters, nephews, and nieces in the first degree exclude the other ascendants and collaterals. The division is made equally among them if they all be born of the same marriage, but, if not, an equal division is made between the two lines of the deceased, paternal and maternal, those of the whole blood sharing in each line, and those of the half blood sharing each in his own line only. If there be brothers, sisters, nephews, and nieces on one side only, they exclude all the relations of the other line. If the deceased have left no issue, nor father nor mother, nor brothers nor sisters, nor nephews, nor nieces, in the first degree, and only ascendants in one line, the nearest ascendant takes one-half of the succession, and the nearest collateral relation on the other side gets the other half. If there be no ascendant, the nearest collateral relation of the paternal line gets one-half, and the other goes to the nearest of the maternal line. Relations beyond the twelfth degree do not inherit, and, in that case, the succession belongs to the surviving consort. In default of a surviving consort it falls to the crown. These different persons represent the deceased, and claims against his estate should accordingly be made against them.

Title Deeds of real property in this Province, made by parties residing in the United States, are valid if executed according to the laws of the locality where made. The certificate of the Secretary of any foreign State or of the executive government thereof, and the original documents and copies of documents hereafter enumerated, executed out of the Province of Quebec, make *prima facie* proof of the contents thereof without any evidence being necessary of the seal or signature affixed to such original or copy, or of the authority of the officer granting the same, namely: 1. Exemplifications of any judgment or other judicial proceeding of any court out of the Province of Quebec under the seal of such court, or under the signature of the officer having the legal custody of the record of such judgment or other judicial proceedings. 2. Exemplifications of any will executed out of the Province of Quebec under the seal of the court wherein the original is of record, or under the signature of the judge or other officer having the legal custody of such will, and the probate of such will under the seal of the court. 3. Copies

of the exemplification of such will and of the probate thereof, certified by the prothonotary of any court in the Province of Quebec, in whose office the exemplification and probate have been recorded, at the instance of the interested party and by the order of a judge of such court. Such probate is also received as proof of the death of the testator. 4. Certificates of marriage, baptism, or birth, and burial of persons out of the Province of Quebec, under the hand of the clergyman or public officer who officiated, and extract of any register of such marriage, baptism, or burial and birth, certified by the clergyman or public officer having the legal custody thereof. 5. Notarial copies of any power of attorney executed out of the Province of Quebec, in the presence of one or more witnesses and authenticated before the mayor of the place or other public officer of the country where it bears date, the original whereof is deposited with a notary public in the Province of Quebec granting the copy. 6. The copy taken by a prothonotary or a clerk of a Circuit Court in the Province of Quebec of any power of attorney, executed out of the Province of Quebec in the presence of one or more witnesses, authenticated before the mayor or other public officer of the country where it bears date, such copy being taken in a cause wherein the original is produced by a witness who refuses to part with it, and being certified and deposited in the same cause.

Wills. Wills may be made in three different forms: 1. In authentic form, to wit, passed 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, and in the presence of each other. 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 by the terms of the will beyond the year and the day allowed by law. Wills executed in a foreign country are void in the province of Quebec, if made according to the forms required by the law of the country where they are made.

SYNOPSIS OF THE LAWS OF
SASKATCHEWAN
RELATING TO
BANKING AND COMMERCIAL USAGES

Will be found the same as Alberta. (See Page 1441.)

SYNOPSIS AND NOTES AS TO DIGEST
OF THE
PHILIPPINE ISLANDS

Prepared by JOS. N. WOLFSON, Attorney at Law, Manila.
(See Card in Attorneys' List.)

Our legal rate of interest is six per cent, but there being no usury laws, any interest contracted for can be recovered.

Our Justice of the Peace in the City of Manila has jurisdiction from one cent to \$300.00, U. S. Currency. For any amount over \$300.00, U. S. Currency, suit must be filed in our Court of First Instance, which Court has concurrent jurisdiction with the Justice of the Peace from \$50.00, U. S. Currency, to \$300.00, U. S. Currency. Appeals can be taken to the Supreme Court of the Philippine Islands for any amount over which the Court of First Instance has jurisdiction.

The cost of filing in the Justice Court, inclusive of Sheriff's fees, is about \$3.00, U. S. Currency. The cost of filing suit in the Court of First Instance, inclusive of Sheriff's fees, is about \$10.00, U. S. Currency. The costs for filing a suit in the Supreme Court is \$12.00, United States Currency. All costs are payable in advance of filing the cause.

A cause is appealed to the Supreme Court of these Islands by preparing and having approved a Bill of Exceptions by the Court of First Instance, which Bill of Exceptions contains the pleadings. The evidence and testimony goes to the Supreme Court from the Court of First Instance in its original form as filed below. The cost of printing of the Bill of Exceptions depends upon the volume of the pleadings, which is about \$1.00, U. S. Currency, per page. Briefs, of course, are paid for by the respective parties and can not be recovered as costs. There are statutory fees allowed the winning party.

Sections 412 and 424 of the Code of Civil Procedure give the causes which justify an attachment.

A chattel mortgage law has recently been enacted by the Commission, thus enabling a person to secure loans on any movable property except on general stock of merchandise in a going store. Specific merchandise in the store may be mortgaged, but not a general stock.

A corporation law is now in effect in the Philippine Islands.

The divorce laws have been suspended by our Laws (code) of Civil Procedure, as well as all bankruptcy proceedings. However, our Courts will grant judicial separations, without granting absolute divorce.

Garnishment of a debtor is allowed, as well as supplemental proceedings.

There is no settled jurisprudence regarding the lien and privilege of a judgment debtor, nor have we any recognized or settled jurisprudences regarding mechanic's liens, as well as a furnisher of supplies.

The Civil Code treats fully the rights of married women.

We have several classes of mortgages, which are fully treated in the Civil Code. The form most in vogue here is the "*venta padio de retro*," which is a conditional sale. The non-payment of the debt at the time mentioned in the mortgage, forfeits the property to the mortgagee. There are no days of grace allowed on any negotiable instrument and protests are now made under the American form.

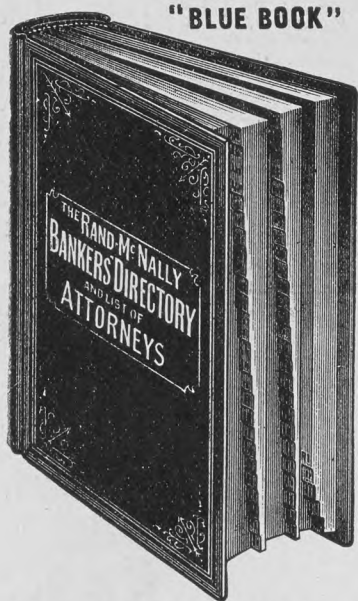
A claim sent for collection may be approved by deposition or by oral examination in court. If a claim is presented by an attorney, and the amount acknowledged as due and owing by the debtor, his evidence will be accepted as proof of admission of the claim.

Real estate sold under execution is redeemable by the judgment debtor, or any party in interest, within twelve months from the date of sale, upon the payment of all costs and expenses and one per cent per month interest. Personal property may be replevined upon complying with the condition prescribed by the Code.

Service of Summons is made by the Civil Sheriff in the City of Manila, and by Sheriff who are duly appointed in the provinces, otherwise by the Governor of the Province, who is the ex-officio officer (Sheriff).

Under the head of Wills, our law relative thereto is exceedingly simple.

Henry E. Huntington
Library



"BLUE BOOK"

A Copy of the NEW

RAND-McNALLY BANKERS' AND ATTORNEYS' DIRECTORY

IS A NECESSITY IN YOUR INSTITUTION.

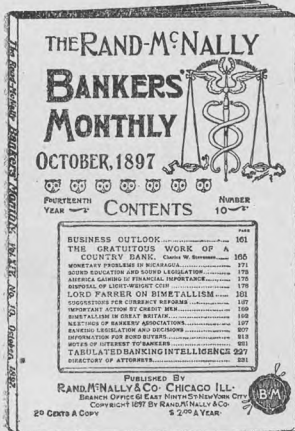
33rd Year of Publication

ISSUED SEMI-ANNUALLY—
JANUARY AND JULY.

62nd Edition Published

CONTENTS.

- 727 PAGES** wherein all of the **BANKS** and **BANKERS** in the United States and Canada are listed in alphabetical order according to States, Cities, and Banks; also a list of Foreign Banks and Bankers.
- 143 PAGES** of **TOWNS** and **VILLAGES** (comprising about 90,000 names) without **BANKS** or **ATTORNEYS** in the United States and Canada, with their nearest **ACCESSIBLE** Banking points.
- 90 PAGES** of **COMMERCIAL ATTORNEYS** (comprising about 9,000 names) in the United States and Canada, recommended by the respective Banks and Bankers; also a list of Attorneys in Foreign Countries, especially prepared.
- 195 PAGES** of **BANKING** and **COMMERCIAL LAWS** of each State and Territory, and including the Canadian Provinces. Compiled expressly for the **DIRECTORY**.
- 70 PAGES** of **INDEXED COUNTY STATE MAPS**, printed in colors (11x14), made especially for the Directory (a **COMPLETE ATLAS**, and worth alone the subscription price of the Bankers' Directory).
- 26 PAGES** of **CITY MAPS** (11x14), comprising the principal cities in the United States
- 105 PAGES** wherein are listed the **DIRECTORS** of National, State, and Savings Banks and the leading Trust Companies in all the principal cities of the United States and Canada, arranged alphabetically by States, Cities, and Banks.
- 15 PAGES** of Banking information in fore part of the Directory, pertaining to Holidays, Grace, Rates of Postage, Payment of Time and Sight paper, Interest Rate, Etc.—Classified Bankers' List, Bankers' Associations, list of National Bank Examiners, value of Foreign Coins; also, a list of Cashiers and Assistant Cashiers, alphabetically arranged.



THE RAND-McNALLY BANKERS' MONTHLY

ESTABLISHED IN 1877.

CONTAINS ABOUT 134 PAGES EACH ISSUE.

EACH ISSUE contains the latest decisions on technical legal questions affecting commercial interests; also carefully prepared articles by prominent writers on economic subjects, besides a fund of other useful information.

A Practical Magazine, and every Banker should read it regularly.

The **BANKERS' MONTHLY** lists each Month all of the New Banks, Failures, Re-organizations, Dissolutions, Changes in Titles, Etc.

BLAIR & CO.

24 BROAD STREET

NEW YORK

DOMESTIC AND FOREIGN
BANKERS

INVESTMENT SECURITIES

TRAVELERS' LETTERS
OF CREDIT



HUNTINGTON LIBRARY
HG2441 .R3 Jan. 1907 gceb
/The Rand-McNally bankers' directory and



3 0006 2032 7028 6