The Following States Have Put in Operation
THE NEGOTIABLE INSTRUMENTS LAW

State	In Effect	State	In Effect
Alabama	Jan. 1, 1908	Nebraska	Aug. 1, 1905
Alaska	Apr. 28, 1913	Nevada	May 1, 1907
Arizona	Sep. 1, 1901	New Hampshire	Jan. 1, 1910
Arkansas	Apr. 21, 1913	New Jersey	July 4, 1902
California	July 31, 1917	New Mexico	Mar. 21, 1907
Colorado	July 19, 1897	New York	Oct. 1, 1897
Connecticut	Apr. 5, 1897	North Carolina	Mar. 8, 1899
Delaware	Jan. 1, 1912	North Dakota	July 1, 1899
Dist. of Columbia	Jan. 12, 1899	Ohio	Jan. 1, 1903
Florida	Aug. 3, 1897	Oklahoma	June 10, 1909
Hawaii	Apr. 20, 1907	Oregon	May 19, 1899
Idaho	Mar. 10, 1903	Pennsylvania	Sep. 2, 1901
Illinois	July 1, 1907	Philippines	May 31, 1911
Indiana	Apr. 30, 1913	Rhode Island	July 1, 1899
Iowa	July 4, 1902	South Carolina	Mar. 25, 1914
Kansas	June 8, 1905	South Dakota	July 1, 1913
Kentucky	June 13, 1904	Tennessee	May 16, 1899
Louisiana	Aug. 1, 1904	Texas	June 18, 1919
Maine	July 7, 1917	Utah	July 1, 1899
Maryland	June 1, 1898	Vermont	June 1, 1913
Massachusetts	Jan. 1, 1899	Virginia	July 1, 1898
Michigan	Sep. 16, 1905	Washington	June 7, 1899
Minnesota	July 1, 1913	W. Virginia	Jan. 1, 1908
Mississippi	July 7, 1916	Wisconsin	May 15, 1899
Missouri	June 16, 1903	Wyoming	Feb. 15, 1905
Montana	Mar. 7, 1905		

The Maturity Section of this Law is as follows:

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.

Exceptions to the above Section are as follows:

MASSACHUSETTS, NEW HAMPSHIRE and RHODE ISLAND allow grace on Sight Drafts.

ARIZONA, KENTUCKY, NORTH CAROLINA, WASHINGTON and WISCONSIN paper maturing Saturday is payable the same day.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Dates of Regular Meetings of Legislatures

Alabama	January, 1923, and every four years.	
Alaska	A Territory.	
Arizona	January	Every odd year.
Arkansas	January	Every odd year.
California	January	Every odd year.
Colorado	January	Every odd year.
Connecticut	January	Every odd year.
Delaware	January	Every odd year.
District of Columbia	Under U. S. Government.	
Florida	April	Every odd year.
Georgia	June	Every year.
Hawaii	February	Every odd year.
Idaho	January	Every odd year.
Illinois	January	Every odd year.
Indiana	January	Every odd year.
Iowa	January	Every odd year.
Kansas	January	Every odd year.
Kentucky	January	Every even year.
Louisiana	May	Every even year.
Maine	January	Every odd year.
Maryland	January	Every even year.
Massachusetts	January	Every year.
Michigan	January	Every odd year.
Minnesota	January	Every odd year.
Mississippi	January	Every even year.
Missouri	January	Every odd year.
Montana	January	Every odd year.
Nebraska	January	Every odd year.
Nevada	January	Every odd year.
New Hampshire	January	Every odd year.
New Jersey	January	Every year.
New Mexico	January	Every odd year.
New York	January	Every year.
North Carolina	January	Every odd year.
North Dakota	January	Every odd year.
Ohio	January	Every odd year.
Oklahoma	January	Every odd year.
Oregon	January	Every odd year.
Pennsylvania	January	Every odd year.
Philippine Islands	June	Every year.
Rhode Island	January	Every year.
South Carolina	January	Every year.
South Dakota	January	Every odd year.
Tennessee	January	Every odd year.
Texas	January	Every odd year.
Utah	January	Every odd year.
Vermont	January	Every odd year.
Virginia	January	Every even year.
Washington	January	Every odd year.
West Virginia	January	Every odd year.
Wisconsin	January	Every odd year.
Wyoming	January	Every odd year.

r FRASER
er.stlouisfed.org
eserve Bank of St. Louis

DIGEST OF BANKING AND COMMERCIAL LAWS

COMPILED EXPRESSLY FOR EACH EDITION OF THE RAND-McNALLY BANKERS' DIRECTORY AND BANKERS REGISTER

by prominent Attorneys in each State of the United States and each province of Canada, the name of the compiler appearing at the head of each State. The Laws are entered alphabetically according to States. Provinces of Canada are listed last.

IMPORTANT: The states in which the Uniform Negotiable Instruments Law is in effect are listed on the index to Laws. **For Tabulated Information, for quick reference** in regard to Interest Rates, Days of Grace, and Statutes of Limitations, see page opposite page 19.

SYNOPSIS OF

THE LAWS OF ALABAMA

RELATING TO

BANKING AND COMMERCIAL USAGES.

Revised by RITTER, WYNN & CARMICHAEL, Attorneys at Law, 610 First National Bank Bldg., Birmingham. (See Card in Attorneys List.)

Acknowledgments or proof of real estate instruments may be taken before one of the following officers: 1st. Within this State, judges of the supreme and circuit courts and the clerks of such courts, chancellors, registers in chancery, judges of the courts of probate, justices of the peace, and notaries public. The official should certify that the person signing the conveyance is known to him and acknowledges that "being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date." 2d. Outside of State—Judges and clerks of any federal court, judges and clerks of any court of record in any state, notaries public, or commissioners appointed by the governor of this State; beyond the limits of the United States, by the judges of any court of record, mayor or chief magistrate of any city, town or borough, or county, notaries public, or by any diplomatic, consular, or commercial agent of the United States. Foreign officers must attach official seal which fact United States. Foreign officers must attach official seal. For forms of deeds see "Conveyances."

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. Non-resident plaintiffs are required to give security for costs. When two or more persons are jointly bound by judgment, bond, or agreement, the obligation is several as well as joint.

Actions on Account. Suits upon open accounts may be accompanied by itemized, verified statement of the account, which when filed with the summons and complaint may be admissible in evidence to prove the account unless its correctness is denied under oath by defendant within the time allowed for pleading. Such statements must be sworn to by a person having knowledge of the correctness of the account and must show that the amount is due and unpaid after allowing all offsets and counter claims and when sworn to outside State, must bear official seal of officer.

Acceptance. Unconditional promise in writing to accept a bill before or after drawn is good in favor of all who take it upon faith thereof for value. The holder may decline a qualified acceptance and treat the bill as dishonored; if he takes qualified acceptance drawer and endorsers are discharged.

A Check is a bill of exchange on a bank payable on demand; must be presented within reasonable time after issue and if dishonored, notice must be given or drawer is discharged to the extent of loss caused by delay; does not operate to assign any part of drawer's funds in bank, and bank is not liable unless it accepts or certifies. If holder has check certified the drawer and endorsers are discharged. The making, uttering, drawing, or delivery of a check, draft, or order upon which payment is refused upon due presentation because of lack of funds shall be deemed prima facie evidence of intent to defraud and party may be convicted of a misdemeanor.

The present negotiable instrument law of Alabama, consisting of 196 sections went into force Ausugt 9, 1907. Its provisions do not apply to instruments made prior thereto, and is substantially uniform negotiable Instruments Act. The act so materially changes the law in this State as to suggest the propriety of special examination in any doubtful case.

Administration of estates is had in the probate courts of decedents' residence. All claims must be presented within twelve months after the same have accrued or within twelve months after the grant of letters testamentary or of administration, or else barred. Infants and persons of unsound mind have one year to present their claims after disabilities are removed. Administration of intestate is granted, 1st: To the husband or widow; 2d: The next of kin entitled to share in the distribution of the estate; 3d: The largest creditor of the intestate residing within this State; 4th: Such other person as the judge of probate may appoint. There can be no appointment until after expiration of Five (5) days from date of death. Preference must be exercised within forty days or rights relinquished. If several entitled to administer, men are preferred to women and whole blood to half blood. Non-resident executors and administrators may sue in this State by recording in probate judge's office copy of letters and giving bond to faithfully administer property. A non-resident may be appointed administrator or executor of a deceased resident's estate. Administrations may be removed to court of equity.

Affidavits may be taken within the State before every judge or clerk of any court, justices of the peace, and notaries public or any other person invested by law with judicial functions. Outside the State and within the United States may be taken before any judge or clerk of federal court, judge of any court of record in any state, notaries public and commissioners appointed by the governor. Foreign officer taking affidavit must attach seal which fact must be recited in the jurat.

Aliens. "Foreigners who are, or may hereafter become, bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens."—Sec. 34, Const.

Alterations. When a negotiable instrument is materially altered without the assent of all the parties liable thereon, it is voided except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. Material alterations consist of any changes in date; sum payable, interest on principal; time or place of payment; number and relation of parties; medium or currency in which payment is to be made.

Arbitration. Courts are compelled by statute to make an order submitting cases for arbitration when moved for by the parties, and to continue this cause for one term for an award, but not longer without consent of parties, or good cause being shown therefor. 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.

Arrest. There can be no arrest on civil process except for contempt and in cases of alleged lunacy, and upon writs of ne exeat.

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 perference 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 process cannot 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. Attachments will issue for the following demands: 1. To enforce the collection of a debt, whether it be due or not, at the time the attachment is taken out. 2. For any moneyed demand, the amount of which can be certainly ascertained. 3. To recover damages for a breach of contract when the damages are not certain or liquidated. 4. When the action sounds in damages merely in falling cases, viz.: 1. Where defendant is a non-resident. 2. When the defendant has absconded. 3. When defendant has secreted himself. 4. When defendant is about to remove from the State. 5. When defendant is about to remove his property from State. 6. When defendant is about to or has fraudulently disposed of his property or fraudulently withholds same. One non-resident may sue out an attachment against another non-resident by making oath that the defendant has not sufficient property within the State of his residence wherefrom to satisfy the debt. Attachments may be sued out in aid of a pending suit when any of the above grounds exist by making affidavit and executing bond. 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 by a resident 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. Open depositors and savings depositors on equal footing in case of insolvency.

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

Blue Sky Law. It is unlawful to sell or offer for sale in this State any speculative securities without first obtaining permit from the State Securities Commission.

Collaterals. Receipt must be given if demanded. Pledges or collaterals not transferable without transfer of the debt; after two days notice in writing collaterals may be sold, by advertising for five days at public outcry.

Conditional Sales are good between the parties, but void where personal property delivered to vendee as against purchasers for a valuable consideration, mortgages and judgments creditors, without notice, unless in writing and recorded in the office of the probate judge.

Conditional contracts of sales must be recorded in office of the Judge of Probate of the county in which the property is located, to be valid against subsequent purchasers, judgment creditors, or mortgagees without notice, except in counties having a population of more than 80,000 when contract is for a less amount than $200.00.

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 cannot 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 twenty-one 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. General acknowledgment must be signed to make instrument self-proving. Married women must acknowledge twice in the event the homestead is conveyed. Form of general acknowledgment is as follows:

The State of Alabama,.....County.

I,....., a (style of officer), hereby certify that.....whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of the

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

conveyance, he executed the same voluntarily on the day the same bears date. Given under my hand and seal, this.....day of .....A. D.

.....

(Seal) Notary Public.

No time is required within which conveyances shall be recorded. They operate as notices from date of delivery to probate judge for record. (See Acknowledgments.) They may be used as evidence without further proof of execution. Leasehold estates may be created to last not exceeding twenty years, but if longer void as to excess. A married woman must make the following acknowledgment to a conveyance of a homestead:

State of....., County of.....

I, ...judge of.....(or other officer) do hereby certify that, on the.....day of....., 19...., came before me the within named....., known to me (or made known to me) to be the wife of the within named....., who, being examined separate and apart from her husband touching her signature to the within....., acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or threats on the part of her husband.

In witness whereof, I hereto set my hand and official seal this .....day of.....19....

.....

(Official Character.)

Corporation to make following acknowledgment:

.....that.....

whose name as....., of the said corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

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 be filed in the office of the insurance commissioner. If the agent is changed, a new paper must be filed. Held not to apply to corporations selling goods by travelling 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 upward, according to capital. Foreign corporations can do no business until fees are paid and all contracts before then are void. Every foreign corporation required to procure from secretary of state a permit to do business in the State. This permit costs $10 per annum.

Courts. Terms and jurisdiction. The supreme court, except to issue writs of injunction, habeas corpus, quo warranto, 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. Court of appeals has final appellate jurisdiction in the following cases: 1. When the amount involved exclusive of interest and costs does not exceed the sum of $1,000. 2. Of all misdemeanors, including the violation of town and city ordinances, bastardy, habeas corpus, and all felonies, where the punishment has been fixed at twenty years or under. 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. Circuit Courts are held twice each year in every County and exercise full jurisdiction in equitable and common law actions, though pleadings and procedure are not affected by consolidation of the two systems. 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 co-partners, must be set out in writs. Partnership may be sued in courts of law, in firm name, without setting forth names of co-partners, but judgment in such suits bind 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.

Days of Grace are abolished. (See Negotiable Instruments.)

Depositions. In cases at law, depositions may be taken of witnesses who cannot 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 No. 4030. 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 or 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 degree of the chancery court. Damages recovered by personal representative for death of deceased are distributed according to statute of distribution and are exempt from payment of debts.

Discovery. Either party to a suit at law or in equity may examine his adversary by filing written interrogatories and making affidavit that answers will be material evidence for him.

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 amounts as with her estate will make the full value of the dower.

Executions. Property subject to: 1st: On real property to which the defendant has a legal title or a perfect equity, having paid the purchase money, or in which he has vested interest, in possession, reversion, or remainder, whether he has the entire estate, or is entitled to it in common with others. 2d: On personal property of the defendant (except things in action), whether he has the absolute title thereto, or the right only to the possession thereof for his own life, the life of another, or a less period. 3d: On an equity of redemption in either land or personal property, when any interest less than the absolute title is sold. The purchaser is subrogated to all the rights of the defendant, and subject to all his disabilities. Writ of fieri facias is a lien only within the county in which it is received by the officer, on lands and personalty of defendant subject to levy and sale, from the time only that the writ is received by such officer and continues as long as writ is regularly delivered to the sheriff without the lapse of an entire term. A statement of a judgment certified by the clerk of the court may be filed in the office of the judge of probate, which makes the judgment a lien within the county in which it is filed for ten years thereafter. Execution may be issued on such judgment at any time. Executions issued by justices are liens on the property of the defendant, on which they are levied, from the time of the levy. An order must be obtained from the circuit court for the sale of lands levied on under execution from a justice'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 court stay is granted on good security, below $20, thirty days over $20, sixty days.

Exemptions. Homestead not exceeding 160 acres or $2,000 in value.

Personal property to the amount of $1,000. Exemptions of personal property may be waived by instrument in writing except as to certain household furniture and provisions and wages to amount of $25.00 per month.

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.

Statute of Frauds. In the following cases, every agreement, or note or memo thereof, expressing the consideration, is in writing and signed by the party to be charged: 1st. Every agreement which by its terms is not to be performed within one year from the making thereof. 2d. Every special promise by an executor or administrator to answer damages out of his own estate. 3d. Every special promise to answer for the debt, default, or miscarriage of another. 4th. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry. 5th. Every contract for the sale of lands, tenements, or hereditaments, or of any interest therein, except leases for a term of not longer than one year, unless the purchase money, or a portion thereof, be paid and the purchaser be put in possession by the seller.

Garnishment may issue in any case after suit commenced upon affidavit of necessity and bond as in attachment cases, or after judgment, without bond.

Holidays. The following are the legal holidays: Sunday, Christmas Day, first day of January, nineteenth day of January, twenty-second day of February, Mardi Gras Day, which is Tuesday before Ash Wednesday, thirteenth day of April, twenty-sixth day of April, third day of June, fourth day of July, first Monday in September, second Tuesday in October, eleventh day of November, and the day designated by the governor for public thanksgiving.

Husband and Wife. 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 is imprisoned under a conviction for crime for a period of two years or more, in which cases the wife may convey it as if she were sole.

Husband and wife may contract with each other, but the wife cannot 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. Divorce bars dower and husband's courtesy.

Interest. Legal rate is 8 per cent, and same is allowed on all open accounts, judgments, and decrees. Usury forfeits all interests and any sums paid as interest on an usurious contract shall be credited on the principal.

Judgments of courts of record are proved by a certified transcript. Judgment not a lien, but when a ceritfied 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 do 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. All agreements to confess judgment, or to authorize another to confess judgment, made before the commencement of the suit in which such judgments are so confirmed are void.

Mechanics' Lien. Contractors, including subcontractors, mechanics, material men, and laborers have a lien on houses built and the ground on which they stand upon complying with the law.

Lien for Rent. The landlords of any store house, dwelling house, or other building, shall have a lien on the goods, furniture and effects belonging to the tenant, and sub-tenant for his rent, which shall be superior to all other liens, except those 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. If anyone entitled to bring an action, or make an entry on land, or defense founded on title to real estate, be at the time such right accrues, within the age of twenty-one years, or insane or imprisoned on a criminal charge for a term less than life, he shall have three years, or the period allowed by law, for bringing such action, if the period allowed by law be less than three years, after the termination of such disability to bring such suit, etc., 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. Actions seeking relief on the ground of fraud where the statute created a bar. the cause of action begins to run upon discovery of the fraud by aggrieved party. No promise or acknowledgment is sufficient to remove the bar to a suit, except a partial payment made upon the contract by the party sought to be charged before the bar is complete, or an unconditional promise in writing, signed by the party to be charged thereby.

Married Women. (See Husband and Wife.)

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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 authorized a sale. All mortgages are void against creditors or purchasers without notice, unless recorded. Mortgages operate as notice from day of delivery to probate judge for record. There is no fixed time within which they shall be recorded. Homestead realty cannot be mortgaged or otherwise aliened 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, revests in the mortgagor, or his assigns, the title to the real or personal property mortgaged, if made in the lifetime of the mortgagor; if made after his death, such payment revests title to personal property in the personal representative, and title to realty in the heirs, devises, 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.

Negotiable Instruments. Must be payable in money and must contain an unconditional promise to pay a sum certain on demand or at a fixed or determinable future time; must be payable to a specified person or bearer; may be in installments and contain provision that on any default the whole shall become due; with exchange fixed or current rate, interest, and attorney's fees for collection; may authorize sale of collaterals but cannot authorize confession of judgment if it reads, "I promise to pay" all signers are jointly and severally liable; may be payable at fixed time after date or sight, or after specified certain event, but not upon a contingency; can waive exemption from execution; need not specify value given nor place where drawn or payable; if issued, accepted, or endorsed when overdue it is payable on demand; may be payable to two or more payees jointly, or one or more of several payees, or to the estate of a deceased person; absence or failure of consideration a defense against one not a holder in due course and partial failure a defense pro tanto. One not a party to instrument placing a signature in blank before delivery becomes an endorser. Every endorser engages that on due presentment it shall be honored or that he will pay the amount to holder or any subsequent endorser who may be compelled to pay; no days of grace; when maturity falls on Sunday or holiday payment is due on next business day; if due on Saturday must be presented on next business day, but if payable on demand holder may present same before noon on Saturday. Fraud and circumvention in procuring execution of instrument is a defense against any holder.

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

Presentment. Is not necessary to charge one primarily liable except in case of bank notes; if payable at special place ability and willingness to pay it there at maturity is equivalent to a tender: if not on demand it must be presented on day it falls due, if on demand then within a reasonable time after its issue, except a bill of exchange must be presented within reasonable time after its last negotiation.

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 of 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, intestates' estates. Also of the appointment, removal, and settlements of guardians for minors and persons of unsound mind, the binding out of apprentices, the allotment of dower, and the partition of land belonging to joint owners. A court of probate must be held at the court house of each county on the second Monday of each month, and the judge may hold special or adjourned terms whenever necessary, but such court must at all times be considered open, except on Sundays. It also keeps a record of deeds, mortgages, and instruments entitled to record.

Promissory Note. Must be unconditional promise in writing to pay on demand or at fixed or determinable time a sum certain in money to order or bearer, and where drawn to maker's own order is not complete until endorsed by him; may be in installments.

Protest. (See Negotiable Instruments.)

Protest of Foreign Bills. May be made by notary public or by any respectable resident of the place in presence of two or more credible witnesses; bill of exchange does not operate to assign funds in hands of drawee and he is not liable unless he accepts.

Replevin. Writ of replevin lies to recover property in custody of an officer of the law, and is limited to this. The action of detinue lies to recover personal property in all other instances.

Sales in Bulk. Sales of all or substantially all of stock of merchandise except in regular course of trade is prima facie fraudulent and void against creditors unless they are notified in writing prior to the sale in manner prescribed by statute.

Taxes become due October 1st, and delinquent on the 31st of December of the year for which they are levied and lands may be sold by proceedings had in the Probate Court commenced in the month of March following the due date of taxes provided the personal property is insufficient to pay taxes. The rate of taxation is 6½ mills or sixty-five cents on each $100.00 on amounts assessed. This is for State purposes only. Municipalities may levy taxes at the rate of fifty cents on each $100.00 except that certain named municipalities of the larger class may levy a larger amount by special constitutional provision. Counties may levy similar amount to the municipalities except that certain special taxes varying in different counties are levied in addition. Assessments based on 60% of the valuation of the property. Counties may vote additional levies for specific purposes and may secure the same by bonds. The purchaser of lands sold for taxes receives from the tax collector a certificate of purchase showing a description of the property, the date and amount of assessment, the taxes, costs, and fees, etc., and after the expiration of two years from the date of sale, the purchaser may get a deed from the Judge of Probate. The delinquent tax payer, has two years from date of sale in which to redeem. After purchaser goes into possession under a deed and keeps possession for three years recitals in the deed are held to be true and cannot be disproved. On redemption, the person redeeming pays the amount of taxes for which the land sold, costs of sale, with interest at 15% per annum and all taxes paid subsequent to the sale by the purchaser with interest thereon at 8% per annum. 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, on the property for payment of taxes for which sold. All cotton factories or cotton mills which shall be constructed in this State within five years shall be exempt from taxation for a period of ten years, provided such mills represent an investment of $50,000.

Wills. All wills of real or personal property must be in writing signed by the testator and declared his last will and testament in the presence of two witnesses who must sign as witnesses in the presence of testator. 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 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 cannot 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 nonresident 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 $100, 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 mortgages; 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 mortgager 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 is 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, 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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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. Thereafter such statement must also be so filed within thirty days after July first of each year.

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.

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 $75. 3. Necessary wearing apparel owned by any person for the use of himself or family, but watches or jewelry exceeding $100 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 $500; 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 $300; 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.

Garnishment. (See Attachment.)

Holidays. The law concerning legal holidays in the Territory has been amended to read as follows:

The following days are legal holidays, namely: Sunday, the first day of January, commonly called New Year's Day; the 12th day of February, commonly called Lincoln's Birthday; the 22nd day of February, commonly called Washington's Birthday; the 30th day of March, to be called Seward's Day in commemoration of the signing of the Treaty, ceding Alaska to the United States; the 4th day of July, commonly called Independence Day; the first Monday in September, commonly called Labor Day; the 18th day of October, commonly called Alaska Day; the 25th day of December, commonly called Christmas Day; and any day designated by public proclamation by the President of the United States or the Governor of the Territory of Alaska, as a legal holiday, or as a day of Thanksgiving; the day known and observed as Memorial or Decoration Day and the day on which a general election is held throughout the Territory of Alaska.

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 $2,500 in value nor exceed 160 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 property executed; but if the owners of such homestead be married, the mortgage must be executed by husband and wife.

Interest. The legal rate of interest is 8 per cent, but on contract interest at the rate of 12 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 8 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

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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, 4 cents per case; salmon salteries, 10 cents per barrel; fish oil works, 10 cents per barrel; fertilizer works, 20 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, $1 per ton on net tonnage; railroads, $100 per mile; tramways, $10 per mile; saw-mills, 10 cents per thousand feet on lumber sawed; quartz mills, $3 per stamp; mercantile establishments and manufactories doing a business of under $4,000 per annum, $10, and in proportion to the amount of business done to $500 for establishments doing a business of $100,000 per annum; in other lines of trade and business the amount is fixed for each and ranges from $10 to $500.

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 or 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

Revised by C. B. WILSON, Attorney at Law, Flagstaff, Arizona.

Accounts. When stated draw interest; when action is upon open account and affidavit of party, his agent or attorney, is attached, stating that such "account is within affiant's knowledge, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed," is prima facie evidence, unless at least one day before trial, defendant files written denial of any item under oath.

Acknowledgments. The form of an ordinary certificate of acknowledgment shall be substantially as follows:

"State of Arizona, } ss
County of..... }

This instrument was acknowledged before me this.....day of.....A. D....., by (if by a natural person or persons here insert name or names; if by a person acting in a representative or official capacity, or as attorney in fact, then insert name of person as executor, attorney in fact, or other capacity; if by an officer or officers of a corporation, then insert name or names of such officer or officers as the president or other officer of such corporation, naming it).

A.....B.....
Notary Public. (Or other officer)
(My commission expires.....)"

Every instrument affecting real property in this state executed, acknowledged and certified in any other state or territory in accordance with the laws of such state or territory, shall be valid and entitled to record as if executed in accordance with the laws of this state.

Actions. Distinction in forms between law and equity are abolished. Pleadings are: Complaint and answer, and in some cases a reply.

Administration of Estates. Lie in Superior Court. No public administrator. Where person dies intestate letters shall issue.

Affidavits. May be taken before any officer authorized to take acknowledgments.

Aliens. Unless rights are secured by treaty cannot hold land in the state, may acquire by inheritance, or in ordinary course of justice in the collection of debts; may acquire liens on real estate, may lend money and secure same on real estate, but title so acquired must be sold within five years; may acquire patented mines and hold stock in domestic corporation owning unpatented mines.

The laws provide that the laws of the state pertaining to aliens shall not be construed as to conflict in any manner with any rights existing under and by virtue of any treaty of the United States with any other country.

Appeals. Appeals are allowed from justice of peace to superior court in certain cases and from superior court to supreme court where amount involved is $200 or over.

Arbitration. There are statutory provisions which are not exclusive of the common law arbitration.

Arrest. Abolished in civil cases, debtor fraudulently removing Property out of territory or concealing it may be prosecuted criminally.

Attachment. Writ will issue on affidavit showing: 1. That defendant is indebted to plaintiff 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 same has not been fully secured by 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 plaintiff or the person to whom the security was given, became 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 amount due; or 2. That defendant is indebted to plaintiff, stating amount and character of debt; that same is due and payable over and above all legal set-offs and counter-claims, and that defendant is a non-resident of this State or is a foreign corporation doing business in this State; or 3. That the action is brought upon a judgment of another State or territory of the United States, or of the District of Columbia; or 4. That an action is pending between the parties, and that defendant is about to remove his property beyond the jurisdiction of the court to avoid payment of judgment; and 5. 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 defendant. No such attachment shall issue until 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. The writ may issue, although plaintiff's debt or demand be not due and under specified facts of intent to defraud; no final judgment shall be rendered until such debt or demand shall become due. Writ may issue at or after action began upon plaintiff or some one in his behalf filing the affidavit, and upon filing a bond with two sureties in an amount equal to amount sued for. Sureties can be compelled to justify upon notice. When more than one attachment is levied on same property writs take priority according to time of levy. (See Liens, Garnishment.)

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 examiner. Provisions are made for the contents of the charter.

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 Holdings.)

Bonds. Any standard surety company, organized under laws of United States or of any state, may execute bonds in judicial proceedings within the state when they have complied with license laws. (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 sum to be secured, 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. Void as against creditors of mortgagor and subsequent purchasers, mortgagees or lien holders in good faith unless immediate delivery of the mortgaged property is made to the mortgagee and the change of possession is 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 situated. Removal sale, or other disposition of mortgaged property without consent of mortgagee entitles mortgagee to immediate possession of it, and such removal, transfer, or sale, or subsequent encumbrance is felony. 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 $200; otherwise in superior 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, void. If copy is filed with recorder, original must be acknowledged, and copy certified to 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 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 to community realty must be signed by both husband and wife except as to unpatented mining claims. Deeds must be signed and must be acknowledged before some officer authorized to take acknowledgment,

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 18 years of age and upward may convey their own lands without being joined by their husbands. (See Acknowledgment, Dower, Husband and Wife, Homestead.)

Corporation Commission, organized under Chapter 90, First Session, Laws 1912. Has general supervision of corporations.

Corporations in General. Any number of persons may become incorporated for the transaction of any lawful business. Before commencing any business, they must adopt articles of incorporation which shall be signed and acknowledged by them as deeds and be filed in the office of the Corporation commission at the State Capital and a certified copy thereof filed in the office of the County Recorder, in each county in the state in which they transact business. The articles of incorporation must contain: 1. The name, residence and Post Office address of incorporators, the name of the corporation, which name shall indicate the character of business to be conducted, 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, which must not exceed two-thirds of its capital stock. 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 times in some newspaper in the county where the principal business is located. Proof of publication must be 'led with the Corporation Commission. Corporations to endure for twenty-five years. Corporation must file in office of Corporation Commission an appointment of agent who is a bona-fide resident of this state for three years prior thereto, on whom all notices and process including summons, may be served and constitutes personal service. Charges for incorporation Recorder's fees, 20 cents folio. Recorders fees, certified copy, 20 cents folio. Recorder's fees certificate to copy, 75 cents. Corporation Commission's fees, filing cost copy, $10. Printers' fees per inch, publishing articles six days, 80 cents. Corporation Commission's fees, filing proof, publishing $3.00. Corporation Commission's fees, filing appointment of agent, $5.00. Where charter provides assessments may be levied on shares to par value.

Corporations, Foreign. Before it can transact business it must file certified and duly authenticated copy of Articles with Corporation Commission and also an appointment of agent upon whom a service personal to the corporation may be made; publish articles of incorporation in some paper in each county in which business is to be conducted at least six times and file with corporation commission affidavit of such publication. Pay license fee of $15.00.

Corporations, Insurance. May be organized under provision peculiarly applicable to insurance companies.

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. 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 State, the U. S. district court for the District of Arizona; one superior court for each County, except in counties having over certain population in which event two superior courts, justices of the peace, police courts, recorders of cities. The superior 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 $200 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 $200.00, except when title to real estate is involved. (See Jurisdiction.)

Creditors' Bills. No statutory provisions.

Days of Grace. None.

Depositions. May now be taken either upon oral examination, and cross-examination or upon written interrogatories and cross interrogatories, as is generally provided.

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 provided. When an intestate leaves surviving a wife or husband another method is provided. Children of the intestate brothers, sisters, uncles and aunts, 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.)

Dower. Dower is abolished.

Evidence. The common law rules have not been codified. 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 may be read. Certified copies of records of all notaries may be read. Court may order inspection or copy of documents.

Executions. Upon a judgment of superior 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 in same manner as upon real estate. (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 person who is the head of a family, and whose family resides within this state, may hold as a homestead, exempt from attachment, execution and forced sale, real property to be selected by him or her, which homestead shall be in one compact body, not to exceed in value four thousand dollars, upon filing affidavit designating such homestead in the Office of the County Recorder in county where property is situated. Such homestead exempt from date of filing said affidavit. The following property shall be exempt from execution, attachment, and sale on any process issued from any court: 1. The family bible. 2. A seat or pew in any house or place of public worship. 3. A lot in any burial ground. 4. Necessary household, table and kitchen furniture, including viz: 5. The tools or implements of a mechanic or artisan necessary to carry on his trade, etc. 6. The sewing machine and implements of a seamstress actually used in pursuing her vocation. 7. One watch, one sewing machine, one typewriting machine, and one bicycle. 7a. Five milch cows. 8. The camping outfit of every prospector in this state, including his mining tools, saddles and burros. 9. The farming utensils and implements of husbandry of the debtor, etc. 10. Poultry not exceeding in value twenty-five dollars. 11. Two horses and two mules and their harness; one cart or wagon; one dray or truck; one coupe; one hack or carriage for one or two horses or one automobile by the use of which a carman, drayman, truckman, huckster, hackman, teamster, chauffeur, or other laborer habitually earns his living and one horse with vehicle or harness or other equipment used by a surgeon, physician, constable or clergyman in the legitimate practice of his profession, with food for such horses or mules for one month. 12. Fuel necessary for the use of the debtor and his family for the period of six months. 13. The presses, stones, type, cases and other tools and implements used by any person or copartnership in printing or publishing a newspaper or in conducting any printing establishment or by any person hired to use them; not exceeding two thousand dollars in value; together with stock in trade not exceeding four hundred dollars in value. 14. The library and philosophical and chemical or other apparatus belonging to and used for the instruction of youth in any university, college, seminary of learning or school. 15. All moneys received by or payable to a surviving wife or child upon the life of a deceased husband or father, not exceeding ten thousand dollars. 16. All moneys arising from fire or other insurance upon any property exempt from sale on execution. 17. All moneys, relief, or other benefits payable to or to be rendered by any police department association, fire department association, beneficiary association, or fraternal benefit association, and any person entitled to assistance therefrom, or to any certificate holder thereof or beneficiary under such certificate. 18. Any claim for damages recoverable by any person by reason of any levy upon or sale under execution of his exempt personal property or by reason of the wrongful taking or detention of such property by any person, and any judgment recovered for such damages. 19. The earnings of the minor child of any debtor or the proceeds thereof by reason of any liability of such debtor not contracted for the special benefit of such minor child. 20 One half of the earnings of the wages or salary of any person for his personal services rendered at any time within thirty days next preceding the levy of attachment, garnishment or execution when it appears by the affidavit of the debtor or otherwise that such earnings are necessary for the use of the family residing in this state, supported in whole or in part by him. 21. All arms, uniforms and accoutrements required by law to be kept by any person, and also one gun to be selected by the debtor. 22. All fire engines.....of any fire department. 23. All courthouses, jails, etc. The property declared to be exempt by this chapter shall not be exempt from attachment or sale in any action brought or judgment recovered for the purchase price of such property so long as such property remains in the possession of the original purchaser. (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. 6. A contract to sell or a sale of any goods or choses in action, of value of $500.00, or upwards, unless buyer accept and actually receive the same or give something in earnest to bind the contract. 7. An agreement authorizing or employing an agent or broker to purchase or sell real estate, or mines, for compensation or commission. 8. An agreement which is not to be performed during lifetime of the promisor, or an agreement to devise or bequeath any property, or to make any provision for any person by will. Every gift, conveyance, or assignment, or transfer, or charge upon any estate, real or personal; any suit commenced on decree, judgment, or executions 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 State sufficient to pay all his indebtedness. Not on that account, however, void as to subsequent creditors. No gift of any goods and chattels shall be valid unless duly acknowledged, or proven and recorded, or by will, or unless actual possession shall have come to and remained with the donor or some one claiming under him. 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 State 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 14, February 22, July 4, October 12, Thanksgiving, May 30, December 25, Arbor Day, Labor Day, November 11, every Sunday and general election day, 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 when any holiday 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.

Homestead. 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

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

the increase, rents, issues, and profits of the same, shall be his or her separate property. The earnings 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 personal property may be disposed of by the husband only. 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 to make contracts binding the common property of the husband and wife; and shall be subject to the same legal liabilities. (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, except to restrain collection of money judgment, when it must be double the amount of such judgment.

Injuries—Personal. Employer's Liability and Compulsory Compensation laws in force.

Insurance. (See special chapter pertaining to Insurance.)

Interest. May contract, in writing, for any rate of, not exceeding 10 per cent per annum. Any rate exceeding this is usurious. 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 superior 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 superior court a transcript of judgment from justice court or of superior 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. For gambling prohibited.

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 employes of debtors have a preference claim for wages for service 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 liveryman, garagemen, 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. Actions for relief on the ground of fraud; must be brought within one year from discovery of fraud. 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; between 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 State; 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. Six years: debt evidenced by writing within the state.

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 8 feet deep, or its equivalent in an open cut so that mineral in place is discovered 8 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. All mortgages of real property and all deeds of trust in the nature of mortgages shall, notwithstanding any provision in the mortgage or deed of trust, be foreclosed by action in a court of competent jurisdiction. Failure of mortgagee to lawfully release a satisfied mortgage for ten 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". Notary must reside in county for which appointed and has no jurisdiction outside of said county.

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

Partnerships using fictitious names must file with County Recorder certificate showing names of partners and their residences, which must be signed and acknowledged by all partners.

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 customs of merchants. (See Bills and Notes.)

Records. The superior 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 probate record instrument therein is notice. The minutes of the Sanitary Live Stock Board are notice of all brands and marks of live stock.

Redemptions. From Sheriff or judicial sales, six months, by judgment debtor, or successors in interest. Senior creditor subsequent to judgment having a lien on the premises sold, may redeem within five days after expiration of said six months, and each subsequent lien holder, according to priority of lien, within five days after time allowed the prior lienholder, by filing with County Recorder statutory notices of intention to redeem. The same rule applies to foreclosure of mortgages and trust deeds.

Replevin. For possession of specific personal property which has not been seized under any process, execution or attachment against the property of the plaintiff.

Sales. The "uniform sales law" is in force.

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 of residence, of defendant, with a member of his family over the age of sixteen years; against incorporated city, or town, or village; upon major, 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 State, service may be had by delivering duplicate copies of summons and complaint to the secretary of the Corporation Commission, and upon foreign corporation by delivery to statutory agent. Personal service of summons may also be had by serving upon defendant by registered mail, as provided in statutes.

Suits. (See Actions.)

Taxes. Aside from those levied by legislative enactment for specific purposes, as for the construction and maintenance of public institutions, etc. State taxes are levied by the State 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 State Board of Equalization. Other property is valued by county assessors. The assessing of value begins in January of each year. The lien attaches on the first Monday of January of each year. One-half of taxes become due and payable on first Monday in September and become delinquent on the first Monday in November next thereafter. Remaining one-half become due and payable on first Monday in March and become delinquent on first Monday in May next thereafter. The penalty for delinquency is 4 per cent added thereto and interest from date of delinquency until paid at rate of 10 per cent per annum. Sixty days after delinquency action may be commenced in Superior Court to foreclose delinquent tax liens, and property sold as under execution.

Warehouses. Personal property in, may be sold for unpaid charges.

Transfer of Corporation Stocks. (See Corporations.)

Wills. 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. Nun-cupative 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 wills can not be initiated after one year from date of probating.

SYNOPSIS OF

THE LAWS OF ARKANSAS

RELATING TO

BANKING AND COMMERCIAL USAGES.

Revised by EMERSON & DONHAM
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, county and probate court, or by county or probate judge, 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 six months; fifth, demands presented within one year. All demands not presented in one year 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. Notes and debts secured by mortgages or

Digitized for FRASER
https://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

deeds of trust must be probated as any other claim, and if not presented to the executor or administrator within one year after appointment, are barred by the statute of non-claim of one year. When the note or debt is barred this carries with it a barring of the mortgage or deed of trust given to secure the notes or debts."

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.

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 defendan thas 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. It is obtained by fil'ng 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 fradulent intent to cheat, hinder or delay his creditors, or is 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. The banking business is controlled by a state bank department under the direction of a bank commissioner. Any five or more persons, the majority of whom must be residents of this state, may apply to the commissioner to be incorporated and the shares of capital stock shall be not less than $25 nor more than $100 each; application may also be made by an individual or firm and shall then be in such form as the commissioner may prescribe and such individual or firm shall adopt a name which will show that it is not incorporated; all property owned by such bank shall be held in the name of the bank and not in the name of the individuals composing the firm and all assets of any such private bank are exempt from execution by any creditor of such individual or firm until all liabilities of the bank have been paid; upon the death of an individual banker his widow is not endowed of any property of the bank except such as remains after the payment of all depositors and other creditors.

No corporation, firm or individual may do a banking business until a fee of one-fifth of one per cent on the authorized capital stock shall have been paid to the bank commissioner. Fees at the same rate must be paid on each increase of the capital stock and for each amendment or supplement to the articles of agreement, except for an increase of capital stock, there shall be paid an additional fee of $10. There is also due the commissioner an annual fee of $15 in addition to a payment of fifty cents on each $1,000 of the bank's capital stock.

The fully paid-up capital stock of any bank organized after the passage of the banking act (March, 1913) cannot be less than $10,000 in cities having less than 2,500 inhabitants, not less than $20,000 in cities having more than 2,500 and less than 5,000 inhabitants, not less than $25,000 in cities more than 5,000 and less than 10,000 inhabitants and not less than $50,000 in cities having more than 10,000 inhabitants.

The banking act does not apply to trust companies whose minimum capital stock is $50,000.

The affairs of an incorporated bank are controlled by a board of directors chosen from the stockholders; each director must be the owner of not less than $500 worth of stock, par value, fully paid-up and not hypothecated; every bank must have on hand at all times as a reserve as much as 15 per cent of the aggregate of its deposits.

Stockholders are liable for the debts of the bank in the sum of the par value of their stock in addition to the amount invested in such stock. (Act No. 113, Acts of 1913, page 462).

Bills. Exchange and Promissory Notes. The Negotiable Instruments Law went into effect on April 22, 1913.

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. When the bills become due on any holiday, they are payable 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 insturments payable on demand may be presented for payment before 12 o'clock on Saturday if it is not a 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, 2 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.)

Blue Sky Law. The State Railroad Commission is constituted and delegated with full power and authority to permit or prohibit the sale of contracts, stocks, bonds or other securities in Arkansas, and application must be made and his permission obtained before foreign or domestic corporations, copartnerships or unincorporated associations offer their securities for sale.

The act was passed in 1915 and amended in 1923, and may be found in Crawford & Moses' Digest of the Statutes of Arkansas, sections 750–771. It is a misdemeanor to do business without obtaining the Bank Commissioner's permission.

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. Such a statute was passed in 1907. A new Curative Act was passed and approved February, 10, 1911.

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 by delivery of the certificate endorsed in blank or to some specified person, or by delivery of the certificate and a separate document containing a written assignment or power of attorney to transfer. The corporation has no lien on its stock for debts due by its stockholders unless such lien is stated upon certificate. The president and secretary are required to file with the county clerk an annual statement of its financial condition, and in case of a failure to do so become liable for its debts. If the directors declare a dividend when the corporation is insolvent they become liable for all the corporate debts. Any corporation which is insolvent or has ceased to do business may be wound up on the suit of any creditor or stockholder by a decree of the chancery court. Preferences by insolvent corporations are forbidden. Shares of stock are in denominations of $25 or $100. Before any corporations, foreign or domestic, can do any business in this State, an annual franchise tax must be paid to the State Treasurer, to wit: Eleven one-hundreths (11-100) of one per cent each year upon the proportion of the outstanding capital stock of the corporation represented by property owned and used in business transacted in this state.

Every corporation doing business for profit and organized as a mutual life, fire, accident, surety, health or other insurance company not having a capital stock and not organized for charitable purposes shall pay an annual tax of $100.00.

All foreign or domestic insurance companies, of whatsoever nature, doing business in this State and having an outstanding capital stock of less than $500,000 shall pay an annual tax of $100; and such companies having a capital stock of $500,000 or more an annual tax of $200, this tax being in lieu of the tax on the capital as provided in other cases.

Every investment company, foreign or domestic, except National banks and corporation not organized for profit, incorporated or unincorporated, which shall sell or negotiate the sale of any stocks, contracts, bonds or other securities of any kind or character other than bonds of the United States, or of some municipality authorized to issue bonds of the State, and notes secured by mortgages on real estate located in the State, or sell building stock or loan investments, shall file in the office of the Bank Commissioner, together with a fee of $5.00, in addition to the fees required of all incorporations, the following documents: A statement showing in detail the plan upon which it proposes to transact business; a copy of all contracts, bonds or other instruments which it proposes to make with or sell to its contributors; a statement showing name and location of company and an itemized account of its actual financial condition and any other such information which the Bank Commissioner may require; if such company be a co-partnership or unincorporated association, it shall also file a copy of its articles of co-partnership or association and all other papers pertaining to its organization; if it be an Arkansas corporation it shall file a copy of its articles of incorporation, constitution and by-laws and all other papers pertaining to its organization; if it be organized under the laws of any other state or territory or government, incorporated or unincorporated, it shall file a copy of the laws of such state or government under which it exists or is incorporated, and also a copy of its charter, articles of incorporation, constitution and by-laws and other papers pertaining to its organization.

The Bank Commissioner shall examine all such papers and may admit or reject such company in his discretion; a company rejected, or whose right to do business is revoked by the Bank Commissioner, may, within twenty days, appeal to the chancery court of any county in the state where its principal office is located or principal agent resides. If it be found that the refusal or revocation was justified, the cost shall be paid by the company; otherwise by the state as provided by statute.

Any individual or persons, co-partnerships, corporation, companies or association, domestic or foreign, which shall sell any building or investment contracts or like securities on which payments are to be made from time to time, shall first enter into a bond with the State of Arkansas in the sum of $20,000 for the faithful performance of its contract.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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 certified copy of its charter together with a statement of its assets and liabilities, and the amount of its capital employed in this state 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. It must also file a resolution of its board of directors consenting that service of process on any of its agents or on the secretary of State shall be a good service. If it sues in the federal court or removes a suit there without consent of its adversary, its right to do business is revoked. Doing business here without compliance with the law subjects the corporation to a fine of not less then $1,000. 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. No foreign corporation can sue on any contract made in this State until these provisions are complied with.

Courts. The supreme court is held at Little Rock and has jurisdiction of appeals from the circuit and chancery courts. In all counties separate courts of chancery have been established. 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 heardby 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.

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. Illegitimate children inherit and transmit an inheritance from the mother in the same manner as if legitimate. If the parents of illegitimate children subsequently intermarry and the father recognizes them as his, they shall be deemed legitimate. 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.

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. Husband takes same interest in wife's property by courtesy after death of wife.

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 officers' hands. The officer before levying on personal property, the title to which is doubtful, may require the plaintiff to give him an indemnifying bond, and then suit must be brought by the claimant upon the bond. The defendant and other judgment creditors have one year in which to redeem from the sale of real estate. In case the writ is returned nulla bona the plaintiff may proceed by bill of discovery against the defendant and examine him on oath, and enforce a surrender of concealed property by imprisonment.

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

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

Garnishments may be sued out pending suit upon giving bond in double the amount garnished, of after judgment without bond. Garnishment may be discharged and funds or property in hands of garnishee released by filing bond for double the amount of sum garnished. Upon judgment being rendered against defendant summary judgment may be rendered against sureties on bond. Act 177 of Acts 1925.

Holidays. The following are set apart and designated as legal holidays: Christmas Day (December 25th); New Year's Day (January 1st); July Fourth; Thanksgiving Day (last Thursday in November); Washington's birthday (February 22nd); Labor Day (first Monday in September); General Robt. E. Lee's bithrday (January 19th); All general biennial election days; Birthdays, Jefferson Davis, President of the Confederate States of America (June 3rd); Arbor Day (first Saturday in March, a special day). When bills become due on any of these days they are payable the next business day. October 12th is Columbus Day (a public holiday, but not affecting commercial paper, or the execution of written instruments, nor interfering with judicial proceedings).

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. The Supreme Court has held that the Federal Bankruptcy Act has suspended the State insolvency laws.

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 only. 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. A judgment survives for ten years.

Jurisdiction. (See Courts.)

Liens. Mechanics, builders, artisans, laborers, and others doing any work upon or furnishing any material for any building or erection under any contract with the owner or his agent, contractor or subcontractor, shall have for such work or material furnished a lien on the building or improvement together with the land on which it stands to the extent of one acre if in the country; if in a city the lot or land upon which the erection is situated. Hotel keepers have lien on baggage and personal effects of guests. Liverymen have lien on all stock and property left in their care.

Limitations. Suits for the possession of real estate must be brought within seven years, saving to minors 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 may consist of one or more general, and one or more special partners. The latter of whom shall constitute in cash a specific amount as his share of the capital, beyond which he is not liable for firm debts. Those forming such partnership must make and file in office of circuit clerk of county, and principal place of business, a certificate showing name of firm, names of partners, distinguishing between general and special, nature of business, amount of capital contributed by each partner, period of commencement and termination of partnership. Business to be conducted by general partners and suits brought by or against them.

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 personality is a non-resident the mortgage is recorded in the county where the property is situated. Sales under mortgages and deeds of trust can be made only after appraisement, and the property must bring two-thirds of the appraised value. In case it is offered and fails to bring the required amount real estate may be offered again after one year and personal property after sixty days, and is then sold for what it will bring. The mortgagor of real estate has one year from the date of sale in which to redeem. In action to foreclose a mortgage, it is sufficient defence that the debt (which it recites), is barred by statute of limitations.

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 he 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.

Mortgages and Deeds of Trust may be enforced by foreclosure at any time within the period prescribed by law for foreclosing mortgage or deed of trust so far as the property mentioned and described in such mortgage or deed of trust is concerned, but no claim or debt against the estate of a deceased person shall be probated against such estate whether secured by mortgage or deed of trust or not except within the time prescribed by law for probating claims against said estate.

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 and Mortgages.)

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 last revision of the statutes was in 1921.

Taxes. All property should be assessed for taxes between the first day of May and the first day of June in each year, except in counties where the population exceeds 75,000, in which taxes should be assessed between the first day of January and the 10th day of April. Taxes must be paid between January 1st and April 10th of the year following the assessment. After April 10th penalty of 25 per cent will accrue. Taxes are first and paramount lien upon real and personal property after first Monday in June of the year in which assessment is made, which lien continues until such taxes with penalty shall be paid.

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.

Wages. No assignment or order of wages to be earned in the future to secure a loan of less than $200, shall be valid against any employer or the person making such assignment or order, until such assignment or order is accepted in writing by the employer and the said assignment or order and the acceptance of same has been filed with the recorder of the county where the party making the assignment or order resides, if a resident of the state where he is employed.

No assignment or order of wages to be earned in the future shall be valid when made by a married man unless the written consent of his wife to making such an assignment or order for wages shall be attached.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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. A carrier may however deliver to shipper or consignee goods without presentation of bill of lading upon receiving from such shipper or consignee bond in double the value of the goods conditioned for delivery to the carrier thereafter the original bill of lading (acts 1907). 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, and 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. Afterborn 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.

Revised by DINKELSPIEL & DINKELSPIEL
Attorneys and Counselors at Law, 901-908 De Young Bldg.
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. An action to recover a balance due upon a mutual current and open account or upon an open book account is barred within four years. The cause of action on a mutual account is deemed to have accrued from the date of the last item. In the case of an open book account, each item becomes outlawed four years after its date. (See Actions and Limitations.)

Acknowledgments. Before an instrument can be recorded, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or other person executing the same on behalf of the corporation, or proved by a subscribing witness, or by judgment in an action brought for the purpose. The proof or acknowledgment of an instrument may be made at any place within the State before a justice or clerk of the supreme 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. Acknowledgments taken out of this State to be used within this State may be taken before a notary public, a commissioner appointed by the governor of this State, a judge, or clerk of a court of record, or in foreign countries a minister, consul, vice-consul, or consular agent of the United States, or a judge of a court of record or a notary public.

Actions. All civil actions are commenced by filing a complaint, upon which plaintiff may, at any time within one year thereafter, have a summons issued. There is but one form of action and the only pleadings allowed on the part of the plaintiff are: 1. The complaint. 2. The demurrer to the answer. 3. The demurrer to the cross-complaint. 4. The answer to the cross-complaint, and on the part of the defendant: 1. The demurrer to the complaint. 2. The answer. 3. The cross-complaint. 4. The demurrer to the answer to the cross-complaint.

Administration of Estates. 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. In case of intestacy, letters of administration are issued to the bona fide resident of the state entitled thereto, in the following order: 1. Relatives of whole blood entitled to administer in preference to those of half blood. 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. Bonds for faithful performance of duty are required of an administrator and of an executor unless waived by the will. Notice must be given by the administrator or executor by publication to all the creditors to come in and prove their claims within ten months after its first publication, when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not. 11. Claims arising on contract whether due or not due or contingent, and funeral expenses must be presented within time prescribed by notice to creditors, otherwise they are forever barred, unless it appears by affidavit of the creditors that such creditor was outside of the State and consequently did not receive notice. Unless claim is approved within the time provided for in the notice it is barred, unless the claimant can prove to the satisfaction of the court that he had no notice by reason of being out of the State, in which case the claim may be presented at any time before a decree of distribution is entered. When 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. 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 expenses of the last sickness. 3. Debts having preference by the laws of the United States. 4. Judgment rendered against the decedent in his lifetime, and mortgages and other liens in the order of their date; and 5, all other demands against the estate.

Affidavits. An affidavit to be used before any court, judge, or officer of this State may be taken before any officer authorized to administer oaths. In this State every court, every judge or clerk of any court, every justice and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or decide upon evidence, has power to administer oaths and affirmations. 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 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.

Aliens. 1. All aliens eligible to citizenship may take, hold and dispose of property, real and personal, within this State.

2. All aliens not eligible to citizenship may acquire and possess land in accordance with the terms of any existing treaty with any foreign country of which such alien is a citizen, and not otherwise, and in addition may lease land for agricultural purposes for three years.

3. Any company, association or corporation composed in the main of aliens may acquire and possess land in accordance with the terms of any existing treaty with any foreign country of which they are citizens, and not otherwise, and in addition may lease land for agricultural purposes for three years.

4. When it appears in any probate proceedings wherein any alien is an heir that he could take real property except for the provision of this act, the probate court shall order the sale of such real property and distribute the proceeds to such alien.

5. For any violation of this act the attorney-general shall institute forfeiture proceedings and upon final judgment the lands shall escheat to the State.

6. When it appears that any alien or aliens are holding any leasehold interests in violation of the above provisions the attorney-general shall likewise institute forfeiture proceedings, and such leasehold interest or its monetary value together with the costs of such forfeiture proceedings shall escheat to the State.

No non-resident alien can take by succession unless he appear and claim within 5 years after death of decedent.

Arbitration. 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. If the submission is not made an order of the court, it may be revoked at any time before the award. All the arbitrators must act, but a majority governs. Their award must be in writing, signed by 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. Title to real property cannot be arbitrated. Upon application a State Board of Arbitration has jurisdiction over disputes between employer and employee.

Arrest. In an action for the recovery of money, upon a contract, express or implied, the defendant may be arrested if about to depart from the State with intent to defraud his creditors, upon order of court based upon affidavit therefor, also in an action 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 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 the defendant has removed or disposed of his property or is about to do so with intent to defraud creditors. Bail given upon arrest is liable upon judgment secured.

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. Assignments must contain names of creditors and the amounts.

Attachments may be issued at the time of or any time after issuing the summons where amount sued for exceeds $10.00. All property not exempt from execution may be attached. An attachment lien upon real property continues for three years and may be extended for two years more. 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. or in Justices Court of from $50.00

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

to $300, 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.

Banks, Savings. A savings bank may purchase or hold: (1) Real Estate, furniture, fixtures, etc., in which its business may be conducted. (2) Property mortgaged or held in trust on account of any money lent in the course of business. It shall not purchase personal property except (1) bonds or interest bearing obligations of the United States (2) bonds of the State. (3) Bonds of any state which has not defaulted in payment of either principal or interest within five years. (4) Bonds of any county, city or town or school, road, sewer, drainage, reclamation, protective or sanitary district, organized under the laws of the state, to limited amount. (5) Bonds of any county, city or town of any state of a population of more than 20,000 and an entire bonded indebtedness less than fifteen per cent of the taxable property, where interest or principal has not been defaulted within five years. (6) Bonds of railroads organized under the state and operating exclusively therein or of railroads operating at least 500 miles of standard gauge tract, or of any railroad corporation payment of which has been guaranteed, by the preceding clauses of railroads; provided, that in all cases the net earnings are as required by statute. (7) Bonds of Public Utility corporations, incorporated under the laws of the State of California, provided the properties and earnings, etc., are as required by statute. (8) Notes or bonds secured by first lien on real estate to sixty per cent of its market value. (9) Collateral trust bonds or notes secured by deposit of authorized bonds fifteen percent in excess of such collateral bonds or the deposit of such bonds and other securities twenty per cent in excess of such collateral bonds, provided the market value of the authorized bonds deposited equal such collateral bonds. (10) Bonds accepted by savings banks under the laws of New York or Massachusetts. (11) Certificates issued by corporations with a paid up capital stock of not less than $100,000 secured upon real estate and guaranteed in the manner required by the Bank Act. No savings bank must loan money except on adequate security on real or personal property and such loan must not be for longer than ten years. It must have a paid up capital stock graduated from $25,000 when located in any place of less than 5,000 population, to $300,000 when the population is in excess of 200,000. Savings banks organized without capital stock must have a reserve fund of $1,000,000. The capital stock and surplus of savings banks, must equal ten per cent to and including $2,000,000 deposit liabilities, must exceed seven and one half per cent of deposit liabilities from $2,000,000 to $5,000,000, five per cent from $5,000,000 to $15,000,000, two and one-half per cent from $15,000,000 to $40,000,000 and one per cent of deposit liabilities in excess of $40,000,000. A surviving husband or wife or next of kin of any deceased person may, without procuring letters of administration, withdraw any sum deceased may have had on deposit in any savings bank if the sum does not exceed $500.00.

Banks. The business of banking may be carried on only by corporations organized for that purpose under the Bank Act. The capital stock and surplus of commercial banks must exceed ten per cent of deposit liabilities. Such corporation are classified as: Commercial, Savings or Trust companies, and, together with building and loan associations, are conducted under the supervision and inspection of a State Superintendent of Banks, to whom such banks must submit at stated intervals to examination. No person unless organized as a bank under the laws of this state may hold himself out as engaged in the banking business, or use the word bank, savings or trust company in connection with his business. Every bank may conduct a commercial and savings department, provided its capital stock, if situated in a locality whose population does not exceed 5,000 amounts to $25,000, or both or either departments in conjunction with a trust department if the same amounts to $125,000. If the population of a locality is from 5,000 to 25,000 a capital of $50,000 is required for a savings and commercial department and $150,000 for both or either in conjunction with a trust department. If the population is from 25,000 to 100,000 a capital stock of $100,000 and $200,000 respectively is required; if the population is from 100,000 to 200,000 a capital stock of $200,000 an ,$400,000 respectively is required; if the population is in excess of 200,000 a capital stock of not less than $300,000 and $500,000 is required. The capital stock must be paid up in all instances. Every bank must designate the character of its business. A bank organized under the laws of another state must comply with all the requirements of the State Bank Act, set apart to its business conducted here the surplus paid up stock required of California corporations, and constitute the State Superintendent of Banks its agent for service of process. 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 business. The same capital stock is required of commercial banks as of savings banks. (See savings banks.) With some exceptions no commercial bank can lend more than ten per cent of its capital stock on unsecured loans or twenty-five per cent upon security worth at least fifteen per cent more than the loan so secured, but a commercial bank may buy or discount bills of lading or exchange drawn against actual value or buy and discount commercial paper, not to exceed twenty-five per cent of its capital and surplus.

Bills and Notes. The Uniform Negotiable Instruments Law is in force. Statutes of 1917. Chapter 751.

Chattel Mortgages may be made on any personal property, including growing crops and fruits, except personal property not capable of manual delivery, articles of wearing apparel and personal adornment, and the stock in trade of a merchant, provided that when said personal property refers to fixtures or equipment of a baker, cafe or restaurant owner, garage owner, machinist or retail or wholesale merchant seven days' notice must be given, otherwise the same is void as to creditors of the mortgagor. 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 faitn, and without any design to hinder, delay or defraud creditors. Such chattel mortgages must be recorded in the office of the County Recorder of the county in which the mortgagor resides, if he be a resident of this state, and it shall also be recorded in the county in which the property mortgaged is situated, or (save in the case of live stock, vehicles, [other than motor vehicles] and other migatory chattels) to which it is removed. If removed to another county such chatel mortgage must be recorded in such county within thirty days of such removal, if such mortgaged property is voluntarily removed by the mortgagor from the county where it is situated, the mortgagee may take possession of the same and dispose of it as a pledge though the debt is not due, save in the case of life stock, vehicles (other than motor vehicles) and other migatory chattels. When the mortgage on live stock, vehicles (other than motor vehicles) and other migatory chattels has been recorded, and a certificate of the same has been filed with the Secretary of State by the County Recorder, the mortgage will not be affected by removal of the property mortgaged to any county within the State.

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. 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 pledgeholder, 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.

Contracts. Certain contracts are invalid unless the same or some note or memorandum thereof is in writing. (See Statute of Frauds.) A contract for personal services cannot be enforced for over five years.

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. Leases of agricultural land for a longer period than fifteen years and of city property for a longer period than ninety-nine years are void. 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 well-established descriptive name it may be described by such as for instance: 'The Norris Ranch.') Witness my hand this (insert) day of (insert month), 19— A. B." The use of the word "grant" implies the following covenants: 1. That previous to the time of the conveyance the grantor had not conveyed the same estate, or any right, title, or interest therein to any person other than the grantee. 2. That such estate is at the time of the execution of the conveyance free from incumbrances, done, made, or suffered by the grantor. Subsequently acquired title passes by operation of law to the grantee, or his successors. Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated. Every conveyance of real property, acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees, and every conveyance of real property other than a lease for a term not exceeding one year is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Corporations. Private corporations may be formed by the voluntary association of any three or more persons, in the manner prescribed by statute not to exceed fifty years. 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. The number of directors of corporations for profit, except those 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. The original articles of incorporation must be filed with the Secretary of State, and upon the filing of the Articles of Incorporation and affidavit, where the same is required, the Secretary of State must issue to the corporation, over the great seal of this State, a certificate that the original articles containing the required statement of fact have been filed in his office, and thereupon the persons signing the articles, and their associates, and such successors shall be a body politic and corporate by the name stated in the certificate and for the term of fifty years, unless it is, in the Articles of Incorporation, otherwise stated, or in this Code otherwise specifically provided; provided however, that no corporation shall be authorized to transact any business until it shall have filed in the office of the County Clerk of the County in which its principal place of business is to be transacted, a copy of the Articles of Incorporation, certified by the Secretary of State. 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. (See Foreign Corporations.) All stocks are assessable for the purpose of paying debts and meeting expenses but no single assessment must exceed 10 per cent. The franchise of all corporations as distinct from its tangible property is subject to taxation.

Each stockholder of a corporation is individually and personally liable for such proportion of its debt and liabilities incurred while he was a stockholder 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, but such liability is barred within three years after the obligation is incurred. 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 term "stockholder" extends 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. Stock held as collateral security, if fact of pledge appears, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder, 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.

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 con-

Digitized for FRASER
https://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

current 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 or the property in controversy, amounts to $300; of actions of forcible entry and detainer, of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annullment of marriage; and of all such special cases and proceedings as are not otherwise provided for. They also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days. 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. 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 in cases in which appellate jurisdiction is given to the supreme court); also on questions of law alone in all cases prosecuted by indictment or information to 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.

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. 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.

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 clerk of the superior court of the 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 notary public, 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 or judge of a court of record in such county. 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. Corrections must be initialed by officer before whom deposition is taken. If the parties agree in writing to any other mode, the mode so agreed upon must be followed.

Depositions in this State. The testimony of the witness in this State may be taken by depositions 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 subpœna to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place. If a commission has not been issued and it appear to a judge of the superior court, or a justice of the peace, by affidavit satisfactory to him: 1. That the testimony of the witness is material to either party. 2. That a commission to take testimony of such witness has not been issued. 3. That according to the law of the State where the action of special proceeding is pending, the deposition of a witness taken under such circumstances, and before such judge or justice, will be received in the action or proceeding, he must issue a subpœna requiring the witness to appear and testify before him at a specified time and place. Upon the appearance of the witness, the judge or justice must cause his testimony to be taken in writing, and must certify and transmit the same to the court or judge before whom the action or proceeding is pending, in such manner as the law of that State requires.

Descent and Distribution of Property. Property, both real and personal, of an intestate passes to his heirs. Upon the death of either husband or wife, one-half of the community property belongs to the surviving spouse; the other half is subject to the testamentary disposition of the decedent, and in the absence thereof, goes to the surviving spouse. Community property is all property acquired by the husband and wife during their marriage, which does not include property acquired by either 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 leaves 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. Illegitimate children inherit from mother, also from father if recognized in writing but can only inherit directly and not by representation. These are the principal provisions of the law of succession. Tenancy by the courtesy is not known to our law. If the person dies intestate, all property passes as directed by the will.

Executions. May issue any time within five years from entry of judgment and after 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. No right of stay exists except by order of the court in its discretion. Execution may issue against the property of a judgment debtor after his death, only if the judgment be for recovery or real of personal property, or the enforcement of liens thereon. Real property may be redeemed within one year, personal property not at all.

Exemptions. The following property is exempt from execution: 1. Chairs, tables, desks, and books, to the value of $200. 2. Necessary household, table and kitchen furniture belonging to the judgment debtor, including one sewing machine, stoves, stove-pipes and furniture, wearing apparel, beds, bedding and bedstead, hanging pictures, oil paintings and drawings drawn or painted by any member of the family, and family portraits, and their necessary frames, provisions and fuel actually provided for individual or family use sufficient for three months, and three cows and their sucking calves, four hogs with their sucking pigs, and food for such cows and hogs for one month, one piano, one shotgun, and one rifle. 3. The farming utensils or implements of husbandry not exceeding in value the sum of $1,000; also two oxen or two horses, or two mules, and their harness; one cart or buggy and two wagons, 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 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, including one safe and one typewriter, 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 appliance 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 same 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 $75. 9. Seamen's and seagoing fishermen's wages and earnings not exceeding $300. 10. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment, where it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family, residing in this State supported in whole or in part by his labor; but where debts are incurred by any such person, or his wife or family for the common necessaries of life, or have been incurred at a time when the debtor had no family residing in this State, supported in whole or in part by his labor, the one-half of such earnings above mentioned are nevertheless subject to execution, garnishment, or attachment to satisfy debts so incurred. 11. The shares held by a member of a homestead association duly incorporated, not exceeding in value $1,000, if the person holding the share is not the owner of a homestead under the laws of this State. 12. All the nautical instruments and wearing apparel of any master, officer, or seaman of any steamer or other vessel. 13. 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. 14. All arms, uniforms and accoutrements required by law to be kept by any person, and also one gun to be selected by the debtor. 15. All court houses, jails, and town, county, and State buildings; all public buildings, grounds, places, etc. 16. All material purchased for use in the construction, alteration, etc., of any building, mining claim, etc., not exceeding the value of $1,000. 17. 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. 18. 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. 19. Shares of stock in any building and loan association to the value of $1,000. 20. Pensions from the United States Government. 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 or other lien thereon. (For Homestead Exemptions, see Homestead.)

Fraud. (For Fraudulent Debtors, see Arrest.) Any contract obtained through fraud is voidable. Consent is deemed to have

or FRAS
er.stlouisfed.org
eserve Bank of St. Louis

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 fradulent 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.

Holidays. Are every Sunday, the first day of January, 12th day of February, the 22nd day of February, the 30th day of May, the 4th day of July, the 9th day of September, the 1st Monday in September, the 12th day of October, Armistice Day, November 11th, 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 of the State, for a public fast, thanksgiving or holiday. If the first day of January, the 12th day of February, 22nd day of February, the 30th day of May, 4th day of July, 9th day of September, 12th day of October, Armistice Day, November 11th, or the 25th day of December fall on a Sunday, the Monday following is a holiday. Every Saturday from twelve o'clock noon until twelve o'clock midnight is a holiday as regards the transaction of business in the public offices of this State, and also in political divisions thereof where laws, ordinances or charters provide that public offices may be closed on holidays; provided this shall not be construed to prevent or invalidate the issuance, filing, service, execution, or recording of any legal process or written instrument whatever on such Saturday afternoons. Contracts made on a holiday are valid.

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 of 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 appraisement 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 upon death of either spouse, if homestead is selected from community property or from separate property of spouse joining therein, title thereto vests in survivor otherwise to the heirs or devises of the person whose property was selected.

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 separate 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. and provided that in the execution of any instrument by which community real property, or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered, the wife must join with him in the execution of any such instrument. 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 husband is not liable for damages or torts committed by wife except in a case where he would be jointly liable with her if the marriage did not exist. 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 entreaties, tenants in common, or as a community property upon death of wife entire community property goes to husband, whereas on death of husband wife gets one half of community.

Interest. The legal rate of interest is 7 per cent and is due upon judgments after rendition and upon other obligations unless there is an express contract in writing fixing a different rate. The parties may agree, in writing, to a higher rate of interest, but not exceeding 12 per cent for one year, and not exceeding that rate for a longer or shorter time.

Judgments. (See Actions.) Upon filing the judgment roll, which is a record of the proceedings in the case, it must be docketed by the clerk, whereupon it becomes a lien upon any real property of a judgment debtor not exempt from execution in the county which the said judgment debtor owns at that time, or which he may thereafter acquire. This lien continues for five years, unless the enforcement of the judgment be stayed on appeal. A judgment is barred by the act of limitation within five years, unless revived by leave of court upon motion or by an action upon the judgment. Judgment must first be satisfied out of property of the judgment debtor which has been attached and in the custody of the sheriff.

Liens. Mechanics, material-men, contractors, sub-contractors, artisans, architects, machinists, builders, miners, teamsters, draymen and all persons and laborers of every class performing labor upon or furnishing material to be used in or furnishing appliances, teams and power contributing to the construction, alteration, or repair of any building, wharf, bridge, ditch, flume, aqueduct, well, 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. The common carrier has a lien upon the luggage of a passenger for the payment of his fare. One who sells real property has a vendor's lien thereon. Improvers of personal property, depositaries for hire, veterinary surgeons, livery stable keepers and persons pasturing horses or stock, have a special lien, dependent upon possession. Factors, banks, and laundry proprietors have a general lien, dependent on possession, on any personal property in their hands. Seaman have general liens independent of possession. Owners of animals used for propagating purposes have a lien for the agreed price upon the offspring. Loggers rendering services upon logs, bolts and other timber have a lien thereon for the amount due for their personal services.

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, persons repairing or altering any personal property have a lien for the reasonable value of such service.

Limitations. If real estate is held adversely for five years, such adverse possession ripens into title if claimant pays taxes for five years, 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: (1) An action upon any contract, obligation or liability founded upon an instrument in writing, executed in this State. (2) An action to recover a balance due upon a mutual open and current count or upon an open book account. 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 on a debt, liability or obligation evidenced by an abstract, guarantee or certificate of title; and such action shall not be deemed to have accrued until the discovery of the loss or damage. (3) 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. There is no limitation upon actions to recover money or property with banks or trust companies. (See Accounts.)

Married Women. A married woman may be sued without her husband being joined as a party and may sue without her husband being joined as a party in all actions, including those for injury to her person, libel, slander, false imprisonment, or malicious prosecution, or for the recovery of her earnings or concerning her right or claim to the homestead property. 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 both her separate property and one-half the commurity property. The earnings of the wife are not liable for the debts of her husband.

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. 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 mortgagee, unless expressly stipulated the mortgage is not a personal obligation on part of mortgagor.

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

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 situated. No such instrument which has been so recorded is revoked by any act of the party by whom it was

Digitized for FRASER
https://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

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.

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 in which the decedent was a resident; (2) in the county in which he may have died, leaving estate therein, he not being a resident of the State; (3) in the county in which any part of the estate may be, if the decedent died out of the State and was not a resident. (4) In any county in which any part of the estate may be, or the decedent not being a resident of the State nor leaving an estate in the county of death. (5) In other cases where application is first made, any person interested may petition for probate of a will or may contest such probate within one year. 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.

Protest. (See Bills and Notes.)

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. Third parties may upon affidavit of ownership, claim such property and secure its release under bonds. 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.

Sale of Stock Shares. Permit must be obtained from State Corporation Commissioner.

Statute of Frauds. A will must be in writing, except a nuncupative will. (See Wills.) 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 $200, unless the buyer accept and receive part of the same or any part of the purchase money. No estate in land will pass other than leases not to exceed one year, unless in writing. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or for a commission. An agreement by its terms not to be performed in the lifetime of the promise or to make, devise or bequeath by will. No evidence is admissable to charge a person upon representations as to the credit of another, unless the representations be in writing. However where promisor has received property to apply pursuant to promise or a discharge of an obligation in consideration of the promise, or where a creditor parts with value or where the new promise is substituted for the old debt, or where levy or execution is released or there is benefit moving to promise from any party or where a factor undertakes for a commission to guarantee a sale, contracts to answer for the default of another need not be in writing. Transfer of personal property capable of manual delivery, except wine in cellars and tanks, when not accompanied by delivery and change of possession are deemed fraudulent as to third parties unless notice of intention of sale is recorded seven days before transfer is made in accordance with law.

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

Taxes. On the first Monday of December 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 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. Public Utility corporations are taxed for the support of the State other property is taxed for county and city purposes.

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; she may also dispose of by will one-half of the community property. Her will must be executed and proved in like manner as other wills. Every will other than a nuncupative will must be in writing, and every will other than an 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 devises or gifts to a subscribing witness are void unless there are two other competent subscribing witnesses. No will made out of this State is valid as a will in this State, unless executed according to the provisions of the code, 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. Wills proven out of state may be recorded in county where testator has left over estate.

Bequests for charity are void unless made more than thirty days before death and must in no case exceed more than one third of the estate unless there are no legal heirs. Wills are revoked by marriage unless provision for the same or an intention not to provide clearly appears.

SYNOPSIS OF

THE LAWS OF COLORADO

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by MESSRS. GARWOOD AND GARWOOD, Attorneys at Law, Ernest & Cranmer Bldg., Denver. (See Card in Attorneys' List.)

Acknowledgments. Of deeds and instruments concerning real estate, may be taken as follows: —

1. Within this State, before any judge, clerk, or the deputy clerk of any court of record, clerk, and recorder of any county, or his deputy, or notary public, or before any justice of the peace within his county.

2. Out of this State and within the United States before the secretary of any such State or Territory, the clerk of any court of record, any notary public, or any commissioner of deeds for any such foreign State or Territory appointed under the laws of this State; 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, as to the official capacity, true signature and authority of the person certifying such acknowledgment.

3. Out of the United States, before any judge, clerk, or deputy clerk, of any court of record of any foreign kingdom, empire, republic state, principality, province, colony, island possession or bailiwick, before the chief magistrate or other chief executive officer of any province, colony, island possession or bailiwick, before the mayor or chief executive officer of any city, town, borough, county or municipal corporation, having a seal, or before any ambassador, minister, consul, consular agent, charge d'affaires, commercial agent, or any vice consul, etc., or any diplomatic consular or commercial agent or representative, or deputy of any thereof, of the United States or any other government or country appointed to reside in the foreign country or place where the acknowledgment is made, each and all certifying same under his official seal.

4. Out of the State, and within any colony, island possession or bailiwick of the United States, before any such officer as above enumerated in relation to acknowledgments in foreign countries (except ambassadors, etc.) or before any notary public, having a seal.

Actions. The distinction between the forms of actions at law and suits in equity is abolished. All actions must be prosecuted by the party in interest, and are governed by a code of civil procedure.

Administration of Estates. All demands not exhibited in twelve months 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. Administration is granted to surviving husband or widow, or next of kin of an intestate, if they will accept or are not disqualified; if no such relative appears within twenty days after death of intestate, administration may be granted to a creditor; if no creditor appears in ten days after twenty days from death of intestate, or if next of kin files written relinquishment county judge may select administrator. In counties having a population of more than 50,000 on default of relatives administration is made by public administrator. An abbreviated form of administration is provided for estates of $2,000 or less. (See Wills; Husband and Wife; Descents and Distributions.)

Agent. (See Partnerships.)

Aliens. Cannot hunt or possess firearms.

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 ne exeat is granted under proper circumstances. (See Fraudulent Purchasers.)

Assignment. Assignments for the benefit of creditors may be made in accordance with provisions of the Assignment Act. Assignments of wages not covered at the time of the assignment, or of other sums to become due to the assignor, are invalid unless recorded with the recorder of the county where the wages are to be earned, or the sums are to become due, within five days from date thereof. If the assignor is a married man or woman, residing with the wife or husband, he or she must join in the assignment. There are also provisions regulating assignments to wage-brokers and others.

Attachments. In actions on contracts, express or implied, the plaintiff may have the defendant's property attached, upon filing a bond in double the amount sued for, with affidavit of 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. That defendant is a non-resident. 2. A foreign corporation. 3. A corporation whose chief office or business is out of this State. 4. Is evading service, or has been absent from State for four months, while debt has been overdue. 5. Is about to remove his property out of State. 6. Has fraudulently conveyed, or (7) fraudulently concealed or removed or disposed of his property, or (8) and (9) is about to do either, or has departed or is about to depart from this State, with the intention of having his effects removed from this State. 10. Has

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

failed or refused to pay the price or value of any article delivered to him to be paid for upon delivery, or (11) of any work or labor performed, or for any service rendered by plaintiff, for defendant, to be paid for upon completion. 12. That the defendant fraudulently contracted the debt, or procured the money or property of the plaintiff. In justice courts, the fact that the debt is for farm products, house rent, household furniture and furnishing, 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 money or property of the debtor is found in possession of third persons, property of non-residents and absconding debtors can be attached as in most other States.

Banks, State. Any number of persons, not less than three, may engage in the business of banking: the capital stock must not be less than from $10,000 to $50,000 dependent upon population, all of which must be paid in cash before commencing banking business, and certificate thereof filed. Generally no bank may take as security a lien on any part of its capital stock; nor take as security a lien on any part of the capital stock of other banks; nor take as security a lien for any person on more than 25 per cent of the total shares of any other bank; 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, or in other peculiar circumstances. Stock so purchased must be sold within three years, and sooner if this can be done without impairing the bank's investment. Shareholders in banks, savings banks, trust deposit and security associations shall be held individually responsible for debts, contracts, and engagements of said association in double the amount of the par value of the stock owned by them respectively. Any banker, bank officer or employee who receives money or property after he shall have had knowledge of the insolvency of said bank, shall be deemed guilty of a felony, and, on conviction, punished by imprisonment in the penitentiary for not more then twenty years, or by a fine of not more than $2,000, or both, 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 20 per cent of the paid in stock and surplus of the bank. Loans secured on real estate limited to 25 per cent of total interest bearing securities and to a period of three years, but further loans allowed secured by first mortgage on real estate worth double amount of loan limited to 50 per cent of saving deposits and to a period of five years. No bank may engage in trade or commerce; or acquire realty, except such as is necessary for its business or such as is necessarily acquired in the protection or satisfaction of previously existing loans made in good faith. Any realty so acquired must be sold in five years, or sooner if possible. No director may borrow money in excess of 10 per cent of the capital and surplus, without the consent of a majority of the directors other than the borrower. No bank shall loan to any officer or employe thereof. All banks except National Banks, are under the supervision of the State Bank Commissioner who examines each institution at least twice yearly. If he finds capital impaired, he requires the bank to make up deficiency, or takes possession for purposes of liquidation, as circumstances may require. Insolvent banks may be placed in control of the State Bank Commissioner. Usually no receiver can be appointed, nor can a bank make an assignment for creditors. Every bank makes reports of its condition to the commissioner five times yearly. No bank can do business without a certificate of authority from the commissioner. Savings banks are subject to the state banking law under a number of special provisions and restrictions.

Bills of Exchange. (See Commercial Paper.)

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

Blue Sky Law. On August 1, 1923, all corporations organized in Colorado who desire to place on sale to the public, securities in certain classes must comply with the "Securities Act" or "Blue Sky Law" which provides that two copies of prospectus issued shall be filed with the Secretary of State setting forth certain information with reference to the company and the Secretary of State shall charge and collect a fee of $10 for the filing of such prospectus.

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. Chattel mortgages may be extended after maturity, but not more than six months after maturity, by filing an executed instrument of extension of mortgage with the county recorder. 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 six months after maturity of debt in which to take possession of mortgaged chattels, and during said six months 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 six months **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. Transfer of stock either in pledge or otherwise, must be noted on the books of the company within sixty days or the transfer void for some purposes.

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 or demand, on at a fixed or determinable time or times. The instrument may authorize that upon default of payment of any installment, or of interest, the whole shall become due, and 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. Consideration is prima facie presumed. A pre-existing debt is a valuable consideration. An accommodation party is liable to a holder for value with notice. 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. 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 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. 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 on due day, and notice of non-acceptance of non-payment given on next business day to all parties primarily liable unless one has authority for all. Every negotiable instrument is payable at the time fixed without grace. 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. 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 agin negotiate it. 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 note drawn to maker's order is not complete unless 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. All instruments falling due on Sunday or holiday are payable the next business day. In Denver, during June, July and August, Saturday from twelve o'clock noon until twelve midnight is a holiday, but negotiable instruments falling due on Saturday are payable and protestable on Saturday or next business day at the option of the holder. The provisions concerning commercial paper in this state are practically the same as in all states where the Negotiable Instruments Act has been adopted.

Conveyances. No joint tenancy in real property unless expressly declared in the deed, except in certain particular cases. Unless so declared grantees shall be deemed tenants in common. Lands not in possession may be conveyed. Not necessary for wife to join in deed except in a conveyance of or a mortgage of a homestead, entered as such of record. Witnesses are unnecessary. Seals are not necessary but a printed or ink seal is advisable. Unacknowledged deeds are deemed notice from the date of filing but they can not be read in evidence unless subsequently acknowledged or proved, unless they are on record for over thirty years. (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 (the par value of each share shall be in such sum not exceeding $100.00 per share as is provided for in the certificate of incorporation or such shares may be issued without any nominal or par value), term of existence (not to exceed twenty years, except in particular cases), number of directors (not less than three or more than thirteen), 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. The certificate shall also state whether or not cumulative voting shall be permitted. Fee for filing Articles of Incorporation of domestic companies is $20, and 20 cents on each thousand dollars in excess of $50,000. Foreign corporations $30, and 30 cents on each thousand dollars in excess of $50,000 represented by capital, property and assets employed and located in Colorado. 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. Cumulative method of balloting for directors is permitted. Stockholders are liable for corporate debts to the amount unpaid upon the stock, except that stockholders in banks, savings banks, trust, deposit, and security associations are individually responsible in double the amount of the par valye of their stock. When the stock becomes fully paid up, a certificate to that effect should be filed. The directors are required annually, and within sixty days from January 1st, to file a report stating the amount of the capital stock the proportion actually paid in, and the amount of existing debts, together with many other particulars. A failure to file such report makes all the directors and officers 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, and subjects president and secretary to a fine of not less than $1,000. 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. A corporation under the laws of Colorado, may extend its charter by special meeting of the stockholders, called by 10 per cent of the entire capital stock. Corporate life shall be renewed for entire term, not exceeding twenty years. 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. Generally 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, until it has filed in the proper offices copy of its charter and incorporation act, and designated an agent upon whom service of process can be made, and until all prescribed fees including license tax, shall have been paid, and until issuance of a certificate setting forth such full payment.

In addition to all other fees and taxes, every domestic corporation shall pay on or before the first day of May of each year, an annual State corporation license tax to the secretary of the State of Colorado, of ten dollars on a capitalization of one hundred thousand dollars or less and ten cents on each one thousand dollars or fractional part thereof, when the capitalization is more than one hundred thousand dollars, and every foreign corporation shall pay at the same rate upon that proportion of its capital, property and assets located and employed in Colorado.

Other provisions of the Revenue bill, approved August 4, 1917, and this act 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.)

Securities Act. (See Blue Sky Law.)

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, where jurisdiction is unlimited. 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. Are abolished. (See Commercial Paper.)

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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

the deposition orally, or, upon proper cause shown, may obtain an order of court directing it to be so taken. Depositions can be taken at any time after starting suit.

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 any; if none, then the whole 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 no children nor their descendants, then to his father and mother, share and share alike, and if one dead, then to the other; if no father or mother, then to his brothers and sisters, and to descendants of borthers and sisters who are dead, the descendants collectively, taking the share of their immediate ancestors in equal parts. 3. If none of the foregoing 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. Illegitimate children inherit if parents subsequently intermarry. Convicted Murderers shall not inherit property of victim.

Dower. Common Law Dower and curtesy are abolished, as such, but statutory half of husband and wife in each others estate is given in lieu of old common law dower and surtesy. (See Statutes.)

Executions. Executions may be issued 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 after five days from judgment and 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. Debtor or legal representative has six months to redeem land from sale under execution. Judgment creditor has three months after expiration of said six months. Judgments can be made a six year lien on real estate of debtor by filing transcript with recorder of the county where the real estate is situated.

Exemptions. Homestead, consisting of town house and lot or lots, or of any farm to the value of not to exceed $2,000, is exempt, 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 $300; one bicycle and one sewing machine. Persons not the heads of families are entitled to tools, working animals, and stock in trade, not exceeding $300 in value. When debtor is head of family, or wife of head of family, 60 per cent of wages due at 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 $5.00 per week at the time of levy, they are entirely exempt.

Fraud. Parties to any fraudulent sale of any lands, goods or chattels, or who conceal, secrete, remove or dispose of any goods or chattels, or are parties to any bond, suit, judgment, or execution, contract or conveyance had made, or contrived with intent to deceive and defraud, or defeat, hinder, or delay creditors; are criminally liable. 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 derraud 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.

Frauds, Statute of. 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 the purchase money. (See Sales of Personal Property.)

Garnishment. (See Attachments.)

Holidays. The following are legal holidays in Colorado: First day of January. 12th day of February. 22nd day of February. 30th day of May. 4th day of July. 25th day of December. Thanksgiving Day. Arbor Day, being 3rd Friday in April. Colorado Day, being August 1st. Labor Day, being first Monday in September. Columbus Day, being 12th day of October. In addition to the above, Saturday is a legal half holiday during June, July and August in all cities of Colorado having a population of 25,000 and over. Not all the above are legal holidays for every purpose.

Husband and Wife retain their separate property, real, personal and mixed owned at marriage, and any such property which shall come to either of them by descent, devise, or bequest, or the gift of any person, 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, and any assignment of future wages, or sums to become due in the future, 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 of testatrix. Marriage revokes a will previously made. The husband is liable for the debts and 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, 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. Neither can mortgage nor convey homestead without the signature of the other.

Interest. The legal rate is 8 per cent, but any other rate may be fixed by agreement with the exception of loans of $300 or less upon which the maximum rate is 12 per cent. Eight per cent 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.

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.)

Limitations. Actions for the recovery of land must be brought within twenty years after accrual of right. Actions for the recovery of lands actually occupied by another under a connected title deducible of record 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 someone 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 assumpsit—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. 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 for fraud must be filed within three years after discovery, 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.)

Married Women. (See Husband and Wife.)

Mechanics' Liens. Mechanics, material-men, contractors, subcontractors, builders, miners, and all persons of every class performing labor upon, or furnishing materials used in the construction or repair of any building, or any other structure or improvement upon land, also all who have rendered their professional, skilled service upon such structure, have a lien upon the property, also those who work or furnish materials or machinery for the working of a mining claim or mineral deposit shall have a similar lien. 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. 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. Ordinary mortgages on realty are in common use; also deeds of trust to a public trustee and to private trustees. A trust deed to private trustee is foreclosed as to 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 encumbrance. 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.

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, acknowledged, published, and filed of record giving details of partnership All persons doing business under any name other than their personal names, must file an affidavit showing the real persons represented, or they may not bring suits 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.)

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, with affidavit of ownership or right to possession, wrongful detention and value of property, etc. Redelivery bond in similar amount may be given by defendant in forty-eight hours after levy.

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. Sales of any portion of a stock of merchandise otherwise than in the ordinary course of trade are prima facie fradulent and void against creditors, unless seller and purchaser together, before sale, make inventory, showing quantity, and cost price of the various articles; and unless purchaser makes full inquiry of the seller as to names and addresses of all creditors of seller, and the amount due to each, and obtains an answer; and notifies each creditor of the proposed sale, the cost price, and the proposed selling price; and unless the purchaser retains the inventory and written answer at least six months after the sale. This act does not apply to sales by legal representatives of public officers conducting sales in their official capacity and there are some other exceptions to this law. (See Husband and Wife.)

Suits. (See Actions.)

Taxes are generally a 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 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. Tax sales are held in November when tax certificates are given to purchasers on which treasurer's deed may issue after three years. Real estate sold for taxes redeemed any time until treasurer's deed issues. 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 12 to 18 per cent per annum. Household goods to the value of $200 belonging to a head of a family are exempt.

Wills. Males of the age of twenty-one years, and females of the age of twenty-one years, may dispose of their real and personal 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.

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 credit, declaring the same, duly signed and witnessed, or by a formal annulment thereof. The property devised by will must be administered by the county court, and all property of non-residents must generally be administered to clear title to real property situated in this State. (See Husband and Wife; Descents and Distributions. Administration of Estates.)

SYNOPSIS OF

THE LAWS OF CONNECTICUT

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by FIELD, DURANT & LEVERE, Attorneys at Law, 129 Church St., 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 Limitations 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.

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 found reasonable 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 if presented more than six months after order of notice, 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 no weight as evidence, and are never admitted as such.

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.

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 except for fraud. 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 in Insolvency. Operation of this section suspended during continuance of U. S. Bankruptcy Act.

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 actions where there is fraud in contracting the debt or concealing property or refusing to pay an admitted debt. 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 twenty 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. Uniform Bills of Lading Act passed in 1911.

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

Collateral Inheritance or Succession Tax. (See Taxes.)

Conditional Sales. All contracts for the sale of personal property, except household furniture, musical instruments, bicycles, phonographs and phonograph supplies 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. Ordinary provisions of Statute of Frauds apply. 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. Gaming or wagering contracts are void. Contract of incapable person pending appointment of conservator or applicant. Void when select men have filed in town clerk's office certified copy of application in case of incapable person, and contract of spendthrift void when select men have filed in town clerk's office 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. The Uniform Sales Act passed in 1907 covers contracts to sell. (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 pease, 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 and residing therein, or any officer authorized to take the acknowledgement 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. Corporations may be formed under the general laws by three or more persons for the transaction of any lawful business except that of bank, savings bank, trust company, building and loan association, insurance company, surety or indemnity company, steam railroad or street railway company, telegraph company, and gas and electric lighting, water company, or any company which shall need to have the right of eminent domain.

A certificate of incorporation must be filed, signed, and sworn to by at least three of the incorporators, giving the name and location of the corporation, the nature of the business, the amount of authorized capital stock, which must not be less than $2,000, number of shares and par value of each, amount of capital stock with which it will commence business, which shall not be less than $1,000. A certified copy must be filed in the town clerk's office.

The organization fee must be paid to the State, of one dollar, on every thousand of its authorized capital stock up to five million, no payment to be less than $50.

Stock may be paid for either in cash or property, but if in property, a majority of the directors must make and sign upon a record book a statement of the amount for which the property is received and its actual value. In case of fraud in such valuation, directors personally liable.

Certificate of organization must be signed and sworn to by a majority of the directors and filed in the office of the secretary of state, setting forth the amount of stock subscribed for, amount paid in cash and in property, amount paid on each share of stock which is not paid for in full, names and address of subscribers with number of shares subscribed for, statement that the directors are officers have been duly elected and by-laws adopted, names and addresses of directors, the location of the principal office in the State with the name of the agent in charge.

There must be at least three directors; vacancies in directors may be filled by remaining directors.

No stock can be issued until it has been paid for in full. Receipts for partial payments of stock may be issued by the treasurer. Certificates for fractional shares cannot be issued. The corporation has a lien on capital stock owned by any person for debts due to capital stock with the approval of stockholders owning three-fourths of its entire outstanding capital stock, given at a meeting called for that purpose.

Stockholders' meetings must be held in this State.

Similar corporations may consolidate.

A corporation may be wound up by voluntary agreement of all stockholders, signed and acknowledged, directors acting as trustees to wind up the business.

Receiver may be appointed on application of stockholders owning one-tenth of the stock, in case of fraud, mismanagement, or if assets are in danger of waste by attachment, or when corporation has abandoned its business.

Annual statements must be filed in the office of the secretary of state and a certified copy thereof in the town clerk's office, either on or before the 15th day of February or August, giving the names and addresses of the officers and directors, amount of outstanding stock not paid for in full with the amount due thereon, the location of the principal office in this State with the name of the agent in charge on whom process may be served. For failure to file annual statement the corporation may forfeit $25 to the State.

Stock of no par value may be issued.

Costs. For case before justice of the peace, actual cash costs not less than $5; before city court from $10 to $50, 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 $2,000, 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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 deliever 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 subpœna 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). 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.

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 and cases where the original attachment is against the body. Any judgment debtor, an execution against whom shall have been returned unsatifised 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 $15, 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, or for the rental of any house or tenement occupied by the defendant as a place of residence when such rental shall not exceed $25); 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. Every foreign corporation, except insurance and surety companies and building and loan associations and investment companies (a corporation which has power to or does sell or negotiate its own choses in action or sell, guarantee, or negotiate the choses in action of other persons or corporations as investments), 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 secterary 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. 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. The president and treasurer of every foreign corporation doing business in this State which is not required by law to make other annual returns 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 thirtieth 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 $100 for each failure. The attorney-general may remit this fine.

Foreign Judgments. Not conclusive on question of jurisdiction. A foreign judgment when used by way of defence, 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. 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 of 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 when 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. (See Surety Companies.)

Holidays. The first day of January, the 12th day of February, Lincoln Day; the 22nd day of February; the 30th day of May; the 4th day of July, the first Monday of September, Labor Day; the 12th day of October, Columbus Day; and the 25th day of December; and if any of said days fall on Sunday, then the Monday next; and any days appointed or recommended by the governor of the State or by the President of the United States for thanksgiving, fasting, or any religious observance. Saturdays after twelve o'clock for all banking purposes

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, and if there are no children of the decedent or representatives of children, and no parent, the survivor shall take all of the estate absolutely.

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. 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. 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 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.

or FRASER
er.stlouisfed.org
serve Bank of St. Louis

Insolvency. Suspended, 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. Express agreements in which 12 per cent is charged are valid and any person making a greater charge is liable to fine and imprisonment. There is no limit to the interest charge which can be made by any National Bank or any Bank or Trust Company, incorporated under the laws of this State nor is there any limit to the interest charge on a bona fide mortgage of real property exceeding the sum of five hundred dollars. Special law for pawnbrokers. Loan companies licensed by Bank Commissioner may charge not to exceed 42 per cent per annum on unpaid balances on all loans up to $300.

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 or before the second day of the session. 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.)

Liens. (Mechanics' Liens.) Any person having a claim for materials furnished or services rendered, exceeding the sum of $10.00, in the construction, erection, and repair of any building, or in the removal of a building, may have a lien on such building, and the land on which the same may stand, and said premises may be foreclosed, in the same manner as if held by mortgage. No one other than the original contractor, or a sub-contractor under a written contract, assented to in writing by owner, shall be entitled to claim a lien unless, after starting and not later than 60 days after ceasing to furnish labor or materials, he gives written notice to the owner of his intention to claim and such lien. A certificate, subscribed and sworn to, describing the premises, the amount claimed as a lien thereon, and the date of the commencement of the claim, must be lodged with the town clerk of the town in which such premises are situated, within 60 days after the person performing such services or furnishing such materials has ceased so to do. Mechanics' liens may be dissolved on substitution of bond. Such lien continues only 2 years after it is perfected unless foreclosure is commenced. Vessels can be subjected to a lien for moneys due for work or materials furnished in their construction, by recording claim in town clerk's office within 10 days after job is done. Persons keeping animals under contract with owner have lien for their contract charge. Mechanics' liens, on claims for materials furnished or services rendered, under any contract with or approved by a railroad corporation owning or managing the railroad, are enforceable. The lien, however must be lodged with the Secretary of State. By Public Acts 1925, there is no priority among Mechanics' lienors, unless some other incumbrance intervenes, in which case prior liens take precedence of incumbrance on pro rata basis as between themselves. Liens after the incumbrance yield to the incumbrance and as between themselves none has priority. The Mechanics' lien attach subject to apportionment only to the amount which owner agreed to pay under the contract.

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 There is no limitation against judgments but the common law presumption of payment after twenty years exists.

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 certificates 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. 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. In all chattel mortgages there must be a particular description of each article of personal property. Judgment for deficiency after sale, permitted.

Notaries Public hold office for five 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, subpœna 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.

Notes and Bills of Exchange. Negotiable Instruments Act now in force.

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. This bond or recognizance must be signed by the obligors in presence of at least one witness other than the authority taking the recognizance.

Sale of Retail Business. Any person (including a person having an interest in a barber shop, dental parlor, restaurant, shoe shining, or hat cleaning business), who makes it his business to buy commodities and sell the same in small quantities for the purpose of making a profit and desiring to sell the whole or a large part of his stock in trade, must file a notice of such intention in the town clerk's office not less than fourteen, nor more than thirty days prior to such sale.

Sales. Uniform Sales Act passed in 1907.

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. A reserve fund of 12 per cent of its demand deposits and 5 per cent of its time deposits must be held and maintained in the banking office, of which 4-12 must be gold and silver coin, demand obligations of the United States or national bank currency, or federal reserve notes and federal reserve bank notes. The remainder of said reserve fund may consist of balances subject to demand draft with reserve agents, which are members of the clearing house associations of New York, Boston, Philadelphia, Chicago, or Albany, or Buffalo, or a federal reserve bank, or national banks, state banks, or trust companies, located in Bridgeport, New Haven, or Hartford, or Waterbury, and of bonds which are legal investments for savings banks which bonds shall at no time exceed at par value one sixth of the total reserve fund. No new loans or discounts may be made when the reserve is below 12 per cent. Bank commissioners may apply for appointment of a receiver when the reserve falls below 12 per cent after thirty days' notice. "Demand deposits" shall mean all deposits payable within thirty days and "time deposits" shall mean all deposits payable after thirty days.

No one person, corporation or firm may borrow more than 10 per cent of the amount of the capital stock paid in and surplus undivided profits combined, of any state bank or trust company. This does not apply to collateral loans. Penalty of $3,000 for violation of this law. Paper of executive officers or clerks may not be discounted. Loans to parties outside the State can only be made when the loans and discounts in the aggregate amount in this state, to one-half of the capital stock.

Books of a bank may be examined by stockholders under certain conditions.

Three-fourths of the directors must be residents of the State. No director may be obligated to a bank or trust company in an amount exceeding 5 per cent of the capital actually paid in and surplus undivided profits combined. This does not apply to loans secured by collateral.

Cashier's bond of $10,000.

At least three reports, verified by oath, must be made each year to the bank commissioners, exhibiting in detail the resources and liabilities of the bank or trust company ten days after receipt of request therefor from the bank commissioners, which shall be published in a newspaper in the county where the bank or the trust company is located. Penalty of $10 for each day of delay in transmitting report.

Words "bank," "trust," or "savings" may only be used by banks, trust companies and building and loan associations incorporated by the United States or by the general assembly, but this shall not apply to firms or individuals doing business as private bankers or brokers under their own names, who deposit with the State treasurer a bond of $10,000, or acceptable securities of that amount for the protection of customers from styling themselves bankers in the conduct of their business. Banks and trust companies maintaining savings departments must invest deposits according to the laws of the State concerning investments of savings banks, and must make sworn statements to the bank commissioners on October 1st in each year and oftener if required by the commissioners, of the amount of such deposits and the securities in which they are invested. A State Bank or Trust Company may be incorporated under General Laws as provided in Chapter 194, Public Acts of 1913.

Suits. (See Actions.)

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Surety Companies. Any corporation with a paid-up capital of not less than $250,000, incorporated and organized for the purpose of transacting business as surety on obligations for persons or corporations, on complying with certain requirements of law may be accepted as surety upon the bond of any person or corporation required by the laws of this State to execute a bond. Every foreign corporation before transacting any business in this State amust deposit with the insurance commissioner a copy of its charter or articles of association, and sworn statement of the condition of its business. The insurance commissioner may thereafter issue to such company a license to do business in this State. Such company must appoint the insurance commissioner its agent on whom process may be served. Such company must file annually on or before March 1st, with the insurance commissioner a statement of the capital of such company and its investments and risks. An annual license is granted if annual statement be satisfactory. Local agents must procure certificates of authority to act as agent from the insurance commissioner. The insurance commissioner may also at any time examine the affairs of any surety company doing business in the State. A reserve fund must be maintained equal to 50 per cent of the gross amount of premiums received on business in force. No such company can incur on behalf of any one person or corporation a liability for an amount larger than one-tenth of its paid-up capital stock and surplus without giving collateral security.

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 2 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. Inheritance taxes are levied on all property within Connecticut possessed by any resident of Connecticut at the time of his decease, and all tangible property within Connecticut possessed by a non-resident at the time of his death which passed by gift, to take effect at death or by will to any person, corporation, voluntary association or society, with exemptions in favor of charities and on certain particular kinds of property. Rates of the taxes are 1 per cent of the value of all property in excess of $10,000 passing to any parent, grandparent, husband, wife, lineal descendant, adopted child, adoptive parent and lineal descendant of any adopted child, up to $25,000 with graded increases; 2 per cent on property passing to the husband or wife of any child of such decedant to any stepchild, brother or sister of the full or half blood and to any descendant of such brother or sister in excess of $3,000 up to and including $25,000, with graded increases; 5 per cent of the value of all property in excess of $500 passing to any persons other than those above mentioned up to and including $25,000 with graded increases. Only one exemption is allowed for each class.

Transfer of Corporation Stocks. (See Corporations.)

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

Warehouse Receipts. Uniform Warehouse Receipts Act passed in 1907.

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 of bequest to a subscribing witness or to the husband or wife of a subscribing witness, is void unless the will is otherwise legally attested, or unless the devisee or legatee be an heir to the testator. Wills are proved and estates settled in the probate court in the district where the deceased resided. Wills of non-residents owning property in this State may be proved by filing exemplified copies thereof in district where property is located. Such course should always be taken in order to pass good title to real estate.

Workmen's Compensation Act. Passed in 1913.

SYNOPSIS OF

THE LAWS OF DELAWARE

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by SYLVESTER D TOWNSEND, JR., Attorney at Law, 210 Ford Bldg., Wilmington. (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 five 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. In Common Plea Court summons must be served personally, and is returnable in ten days.

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 $50. Unlike domestic attachments the plaintiff in foreign attachments 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. By recent amendment in cases of foreign attachment it is no longer necessary to enter security to discharge the attachment, before an appearance can be entered. An appearance may be entered without security to discharge the attachment, and the goods attached remain as security pro tanto.

Banks. There is no general banking act and but one State bank, which was chartered by the legislature in 1807. Banking companies can not be formed at present, except by special act of the Legislature. 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. There have been recently several trust companies formed in the State, either by special act before the 1897 constitution, and by general corporation act since, which have been granted banking powers to special statute. Banks and trust companies are now subject by examination and inspection by insurance commissioner. By recent amendment, National Bank may act as Trustee, Executor, Administrator, or Registrar of stocks and bonds. Bank by recent amendment, prevented from loaning more than ten per cent of capital stock and surplus to any one person.

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. No 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 curtesy. 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 under its corporate seal. 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 $10, 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 are held in New Castle County at Wilmington the first Monday in January, March, May, and November and third Monday in September, in Kent County at Dover, the first Monday in July and the third Monday in February, April, and October, and in Sussex County the first Monday in February, April, and October and last Monday in June in Georgetown. Oyer and terminer meets on call of judges. Jurisdiction—The superior court has jurisdiction in all civil cases, but if suit be brought for less than $50, costs will not be recovered. Justice's jurisdiction, $200. New Court known as Court of Common Pleas was recently created for New Castle County. Presided over by one of the Judges of Superior Court. Open continuously except July and August. Jurisdiction of all cases ex contractu up to $1,000.

or FRASER
er.stlouisfed.org
serve Bank of St. Louis

Descent and distribution of intestate estates. First: In equal shares to children, and the lawful issue of deceased children, by right of representation. Second: If no issue, to father and mother as tenants by entirety. Exceptions in case of divorce. Third: If no issue, or father or mother, in equal shares to brothers and sisters and the lawful issue of deceased brothers and sisters; brothers and sisters of whole blood preferred to half blood. Fourth: If no issue, father or mother, brothers or sisters or lawful issue thereof, then to next of kin in equal degree, and lawful issue; provided collateral kindred claiming through a near common ancestor shall be preferred to those claiming through a more remote common ancestor. Fifth: Descent of intestate real estate subject to rights of surviving husband or wife; that is, if intestate leave husband and issue, husband shall have one-half part of real estate for life, and if intestate leave husband and no issue husband shall have all real estate for life. Sixth: If intestate leave a widow and issue, widow shall have one-half part of real estate for life and if no issue widow shall have all real estate for life. Seventh: If intestate leave husband or widow and there be no kin or heir then to husband or widow in fee simple.

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."

Executions are a lien upon personalty from the time the sheriff received the writ, if actual levy be made within sixty days thereafter. Priority of lien remains in force 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 defence, 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 thereof. The defectively drawn amendment of 1925 to "Distress for Rent Act" makes law uncertain as to some exemptions.

Frauds. Sale of goods void as to third parties, unless for 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 $5 is binding if proved by the oath of the promisee; for an amount between $5 and $25 must be proved by one credible witness or some memorandum in writing signed by the person to be charged therewith; for an amount exceeding $25 there must be some memorandum or promise in writing signed by the party to be charged therewith. Sale of Goods in Bulk Law recently amended imposing penalty upon seller and purchaser where requirements as to notice on creditors is not carried out.

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, Good Friday, May 30th, July 4th, first Monday in September, October 12—Columbus Day; Armistice Day; Day of the general election as it biennially occurs. 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 until 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, for a period of ten years and may be revived and kept alive and a lien by SCI. FA. or agreement before expiration of ten years from date of entry. This 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 after execution and return by Constable on goods of defendant. Satisfaction must be entered within sixty days after payment. Judgment in Court of Common Pleas is not a lien on Real Estate unless Transcript filed as in case of Justice of Peace.

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 within ten years in order to preserve their lien on real estate. The statute does not begin to run in favor of non-resident debtor until he comes 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 dies without issue or the children of issue she takes a moiety instead of a third part of the real estate. A married woman of the age of twenty-one years and upward may dispose of her property, both real and personal, by will, without the written consent of her husband, but subject to his right of courtesy. Two or more witnesses are necessary for a will. Husband and wife may testify in all civil actions in which either or both are or may be parties to the suit.

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

Proof of Claims. The full individual names of plaintiffs and defendants, together with style of doing business, must be stated; or if a corporation, the laws of what state under which incorporated. One of the plaintiffs, if a partnership, or the treasurer or cashier of a corporation, must make 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 plaintiffs 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 or duly authorized agent named for said services. 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, from the first day of July of the year in which tax is imposed. State income tax payable on or before March 15th of each year for preceding year, 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 testators' 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

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. The common law forms of actions are used except as modified by statutes.

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 and legacies 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. Assets of non-residents in District of Columbia are subject to claims of local creditors for one year after death.

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. If taken before a justice of the peace, a certificate of his official authority from a clerk of a court of record should be attached.

Aliens. Aliens may hold real and 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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 from the Municipal Court to the Supreme Court of the District are now abolished. Writs of error from the Court of Appeals of the District may issue to the Municipal Court for the review of judgments on questions of law. Appeals may be taken from the supreme court of the District of Columbia to the court of appeals of the District of Columbia. Certain cases are appealable direct to the Court of Appeals. Appeals may be taken from the court of appeals to the supreme court of the United States:

1. In cases where jurisdiction of trial court is in issue.
2. Prize cases.
3. Constitutional questions or treaties involved.
4. Where validity of any authority exercised under U. S., by an officer is in question and
5. Construction of any law of U. S. is drawn in question.

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, and for contempt of court.

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.

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. 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. 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. 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 $25.

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

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 acknowledged and 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 anv 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, of child or descendants, the widow shall have one-third only; if in 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.

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 $200, stock for carrying on business to amount of $200, one horse, harness and cart, wagon or dray, and earnings of married men or heads of families, not to exceed $100 per month 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.

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, and the day of the inauguration of the President, in every fourth year, shall be holidays in the District for all purposes. Every Saturday is a legal half holiday and notes falling due on that day are not payable until Monday. Process is not served by the marshall after 12 o'clock on Saturday.

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. A husband, who willfully neglects to provide for wife or minor child under sixteen years, in destitute circumstances, may be adjudged guilty of a misdemeanor, and may be fined, or imprisoned, by the court having jurisdiction.

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. By express contract this rate may be increased to 8 per cent.

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 the municipal court are good for six years, but are not liens on real estate until recorded in the supreme court of the District of Columbia.

Jurisdiction. (See Actions, Appeals, and Municipal Court.)

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.

Municipal Court. By an act of Congress, effective June 1, 1921, the Municipal Court of the District of Columbia was made a court of record. It now has exclusive jurisdiction in all civil cases in which

or FRASER
er.stlouisfed.org
serve Bank of St. Louis

the claimed value of personal property, debt or damages exclusive of interest and costs, does not exceed $1,000. When the value in controversy shall exceed $20, and in all actions for the recovery of the possession of real property, either party may demand a jury trial. Judgments rendered by the Municipal Court remain in force for six (6) years and no longer, unless it shall be docketed with the clerk of the Supreme Court of the District of Columbia, when it remains in force for twelve (12) years. No judgment shall be a lien upon the defendants real property until so docketed.

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 for 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 cannot 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 the 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.

Taxes. The rate of taxation is now subject to the will of Congress to be fixed each year as may be expedient. At present the rate is $1.40 per hundred upon assessed values of real and personal property. Assessments of real estate are fixed at the fair cash value. Penalty of 1 per cent per month for default in payment. A lien for real estate taxes accrues on the date taxes are assessed, July 1st. Taxes are payable, one-half on May 1st and one-half on November 1st of each year, with 30 days grace for payment before penalty attaches. New assessments are made every two years for real estate (unless improvements are put on) and every year for personal property by a permanent Board of Assessors. Intangibles are taxed at the rate of one-half of one percentum of the fair value thereof.

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. 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.

SYNOPSIS OF

THE LAWS OF FLORIDA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by HALEY & HEINTZ, Attorneys at Law, Graham Bldg., Jacksonville, Fla.

Accounts. Open accounts are barred in three years.

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; or if made out of the State, and within the United States, before a United States Commissioner of Deeds appointed by the governor of this State, or before a judge or clerk of any court of the United States or of any state, territory or district, having a seal, or before a notary public or justice of the peace of such state, territory or district, having an official seal, and the certificate of acknowledgment or proof shall be under the seal of the court or officer as the case may be. 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. 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 his wife.....known to me to be the individuals described in and who executed the foregoing instrument who acknowledged that they executed the same for the uses and purposes therein expressed and the said.....wife of the said.....being by me further and privily examined separate and apart from her said husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion, or constraint of, or from her said husband, and for the purpose of renouncing and relinquishing all her right, of whatsoever kind, in and to said property.

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

Notary Public.

My commission expires..... .(See notaries.)

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

Administration of Estates. Upon the death of a person intestate or having made a will but appointing no executor, the county judge appoints an administrator, preferring first the next of kin; but if none such apply, then, upon notice given by publication, any creditor or suitable person. No minor can be appointed. If no one applies for letters of administration within sixty days after death, the probate court may order the sheriff to act. The administrator appointed by the court must give bond in amount to be fixed by the probate judge, respect being had to the value of the estate. The sheriff when acting as administrator is liable upon his official bond. Claims against an estate are barred after one year from date of notice given by administrator to present same. 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. 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. The Circuit Court is empowered to authorize administrator or executor to carry on deceased's trade or business for a reasonable time.

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 any 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. 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. Appeals in chancery may be taken within six months 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, corruption, 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.

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 resides beyond the limits thereof, or is actually removing or about to remove out of the State, or absconds or conceals himself or is secreting property or fradulently 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, 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 secreting his property for such purposes. The making of the affidavit causes all debts to mature for the purpose of the suit. Plaintiff must give bond, with two sureties in at least double the debt or sum demanded. One surety is sufficient if that surety is a surety company authorized to do business in the state of Florida. 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 both before and after judgment. If issued before judgment plaintiff, his agent or attorney must make affidavit that the debt for which the plaintiff sues is just, due and unpaid; that the garnishment applied for is not sued out to injure either the defendant or the garnishee; that he does not believe that defendant will have in his possession after execution shall be issued visible property in this state and in the county in which suit is pending upon which a levy can be made sufficient to satisfy the amount of plaintiff's claim, stating the amount, and, except in cases in which plaintiff has had an attachment or obtained his final judgment, he, his agent or attorney, must enter into bond payable to defendant in double the amount of the debt, conditioned to pay all costs and damages which defendant may sustain in consequence of plaintiff's improperly suing out the writ.

Banks. No banking company shall be organized with a capital less than $50,000, except that banks with a capital of not less than $15,000 may with approval of comptroller, be organized in any city or town containing not more than 3,000 inhabitants, and that banks with a capital stock of $25,000 may, with the approval of the comptroller, be organized in any city or town of not more than 6,000 inhabitants. 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, except national banks, and inspect and examine its books, papers, documents, minutes, and everything pertaining to the acts of the bank. Banks are required to make full and complete reports whenever called for by the State Comptroller in such form as he may prescribe, and advertise in January of each year amount of stock, property, and contractual

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

indebtedness. Before organization the whole of the capital stock must be paid in cash. 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. Private bankers are subject to all penalties of the State banking laws and to the supervision and control of the State Comptroller. No new private banks permitted after June 4, 1915. It is a misdemeanor to make wilful and malicious derogatory statements affecting banking institutions.

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 a bill of lading not a warrantor 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 requied to comply with the terms of the bill of lading under penalty of criminal prosecution.

Blue Sky Law. Corporations before offering for sale their stocks, bonds, or other securities are required to file with the State Comptroller, together with filing fee of $5.00, the following documents: statement showing in full detail the plan under which the corporation proposes to transact business; copy of all contracts, bonds, stocks or other instruments which it proposes to sell; name and location of the company; itemized financial statement; and such other information as the Comptroller may require. In addition to the above such corporation is required to file copy of its articles of incorporation, constitution and by-laws. All the above papers to be verified by oath of the president of the corporation, or other duly authorized officer. If it is a foreign corporation it is required to file with the Comptroller written and irrevocable consent to accept service of process on the State Comptroller as personal service upon the corporation in suits filed against it within the State. This consent to be pursuant to resolution of the board of directors, shall be duly authenticated by seal of the corporation, signature of the President, Secretary, etc. The Comptroller and Attorney General are required to make such detailed investigation and examination of the affairs of the corporation as they deem necessary at the expense of the corporation. If in the opinion of the Comptroller and Attorney General the corporation should be permitted to sell its stocks, bonds, etc., they will issue a permit. No stock may be sold until the permit shall have been received. It is also required before stocks, bonds, etc., may be sold that an agent be appointed by the corporation for the sale of its stock, bonds, etc., which agent is required to register with the Comptroller as agent for such corporation. The Comptroller and Attorney General may if they see fit require such agent or agents to file a bond conditioned that the securities offered for sale are fair and just, and conditioned to hold harmless the purchasers against loss occasioned by reliance by such purchasers on false or fraudulent representations made in the course of sale. The agent's authority is subject to revocation at any time by the Comptroller and Attorney General, and automatically expires on January 1st of each year. Financial statements are required to be forwarded to the Comptroller and Attorney General upon their demand. The Comptroller and Attorney General are authorized to revoke license of such corporation to transact business within the State if in their opinion the corporation at any time is insolvent, or conducting its business in an unsafe, inequitable or unauthorized manner.

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 affectual against bona fide creditors and purchasers for value. Injunction will be granted against the removal of mortgaged personalty from the State; can only be foreclosed by bill in chancery unless under $100, and upon personal property, when a common law action may be brought in justice of the peace court, and mortgage filed with precipe. The form and effect of trust deeds have not been disturbed by statute. It is a criminal offence to mortgage personal property more than once without the consent of first lienor.

Checks and Drafts. It is a felony to obtain money or goods by drawing and uttering check or draft having insufficient funds on deposit to pay same, provided the check or draft is presented in due course and drawer fails to pay same, or return the consideration received, within twenty-four hours after written notice of dishonor.

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, but notice must be given to pledgor ten days prior to sale.

Contracts. Statute of Frauds. In order to bind an administrator personally, or any one for the debt or default of another, or one upon an agreement made in consideration of marriage; or upon contracts for the sale of 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 and periodicals 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 up to $125,000 capital; 50 cents per $1,000 on each additional $1,000 up to $2,000,000 and 25 cents per $1,000 for additional, payable to the State, but no fee is less than $10.00. Corporations may have stock of "no par value." (See Service of Process.)

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

Courts. Circuit courts hold two terms a year in each county, except in twelfth where four terms are held and in first, ninth, eleventh and fourteenth circuits where they hold three terms a year, and have original jurisdiction in all equity cases, also in all cases at law not cognizable by inferior courts. County courts in such counties as have 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 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 and mother in equal shares, or to survivor. 4. If no father or mother than to the brothers and sisters and their descendants. 5. If there be no brother or sister nor their descendants, 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 without issue, leaving no husband or wife, shall descend: 1. To father of infant. 2. Mother of infant. 3. Brothers and sisters of infant. 4. In case no father, mother, brothers or sisters or their descendants surviving, then it descends according to the general rules of descent prescribed by statute. 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.

Dower. Deceased may not by will cut off his widow's right to dower. If dissatisfied with terms of will, she may dissent within one year after probate of will and she will then be entitled to one-third of the real estate for life, and, if there are two or more children, to one-third of the personalty in fee simple; if there are no children, or only one, she will be entitled to one-half the personalty. She may within one year elect to take a child's part in lieu of dower. If the husband die intestate, without children, the wife takes the whole estate, or dower, at her election.

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, devises, etc. No person is excused from testifying or producing documents in trials for bribery, burglary, larceny, gambling, or illegal sale of liquors, on ground that it may tend to convict him of crime but no such person shall thereafter be prosecuted or subjected to any penalty on account of anything concerning which he may so testify or produce evidence.

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 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. Wages and salary of head of a family residing in the State is exempt from garnishment.

Foreign Corporations. Commercial corporations can do business in this State without restriction upon complying with requirements as to foreign corporation, provided its name is not the same or so nearly similar to any domestic corporation as to cause confusion. (See Service of Process.)

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. Defined by statute are: Sundays. January 1st, January 19th, February 22d, Good Friday, April 26th, June 3d, July 4th, first Monday in September, second Friday in October, November 11th, and general election days, Thanksgiving Day, Christmas and Shrove Tuesday or Mardi Gras in cities where there is a Carnival Association organized for the purpose of celebrating it.

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 deed. 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; to prevent the removal from the State of mortgaged personal property, and to abate bawdy houses and gambling dens.

Insolvency. Statutes suspended by national bankruptcy law.

Insurance Companies. Foreign and domestic, are placed, by statute, under control of State treasurer. 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 without notice, must be recorded, and suit

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

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 on Florida judgments, actions on contracts or obligations in writing and under seal twenty (20) years; actions for the recovery of real property, actions on judgments of courts of the United States or any other state or territory seven (7) years. On contracts in writing not under seal, five (5) years. On all actions not herein and specifically mentioned, four (4) years. Trespass to realty, action upon liability created by statute other than a penalty of forfeiture, taking, detaining or injury to chattels, for relief on the ground of fraud, upon contract not founded upon instrument of writing, including an action open account for goods, wares and merchandise, three (3) years. Actions for libel, slander, assault, battery, false imprisonment, or an action by another than the State upon a statute for a penalty or forfeiture two (2) years. Actions for wrongful death of a child, 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. Wife by petition to proper court may be decreed a free dealer and as such sue and be sued.

Minors. Both sexes attain their legal majority at the age of 21 years. Minors who deposit in savings banks may control, transfer or withdraw the money so deposited. All other contracts made by them are voidable, except for necessaries. Marriage removes disability of non-age of male minor.

Mortgages of real estate must be executed and proved or acknowledged in the same manner as deeds, and they, likewise assignments thereof, 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. Negotiable instruments falling due upon a holiday (see Holidays) 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 noon on Saturday unless that entire day is a 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 of 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 deeds 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.

Seal. A scrawl or scroll, printed or written, affixed as a seal to any written instrument, is effectual.

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. Process against a domestic or foreign corporation may be served upon any officer or business agent of said corporation residing in Florida. If defendant corporation is doing or has done business in the State, and the sheriff makes return that he cannot serve the process because of the corporation's failure to elect officers or appoint agents, the court will make an order requiring defendant to appear and defend upon a rule day after four weeks' publication of the order.

Suits. Actions at law are commenced by filing a precipe 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 not due and payable until the first day of November, and if not paid by first day of the following April property may be sold. Owner has two years within which to redeem. Taxes are a lien from the first day of the year 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. Uniform Warehouse Receipts Act adopted, and effective after July 31st, 1917.

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 may be by subsequent will or codicil attested like the original, or by burning, cancelling, tearing or obliterating the same by the testator or by his direction and consent, or by the act and operation of law. 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

Revised by RANDOLPH, PARKER & FORTSON, Attorneys at Law, Atlanta. (See Card in Attorneys' List.)

Acknowledgments. (See Deeds.

Actions. All distinction between suits at law and in equity is abolished. Equitable relief can be had in superior courts of law.

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 of the 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. 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. Foreign administrators may act in this State on giving bond 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 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.

Arrest. The constitution of Georgia declares that there shall be no imprisonment for debt. But in an action to recover personal property wrongfully taken or withheld, 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.

Assignments. Assignments for the benefit of creditors are permitted.

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 fradulent 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 exists 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. Non-resident corporations are liable to attachments, and one non-resident may attach the property of another non-resident in this State, except for wages earned without the State.

Banks. Any number of persons, not less than five, may form a corporation for the prupose of carrying on the business of banking. Such corporations, when organized, have 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 or more than twenty-five of the members of the corporation, who must be owners and holders of two or more shares. No bank shall be chartered without a capital subscription in good faith of at least $15,000, of which not less than sixty 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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 shall not be made until approved 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, below 15 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. 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. 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. 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 deposits, and loss or injury result to such depositor, such banker or officer in charge of the bank receiving the deposit shall be punished as prescribed in the penal code. The State has a special lien for all public money deposited. State banks are authorized to become members of the Federal Reserve Bank.

Bills of Lading and Promissory Notes. A bona fide assignee of a bill of lading of goods will be protected in his title against the seller's right of stoppage in transit. It is not necessary to protest any negotiable instrument upon dishonor, except in case of foreign bills of exchange. Accomodation endorsers, sureties and endorsers may be sued in the same county and in the same action with the maker, drawer or acceptor. Bills of exchange must be accepted in writing to bind the acceptor. A contract to pay attorney's fees cannot be enforced unless the debtor when served ten days before suit is filed with a written notice of intention to sue with amount 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. 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 as mortgages to hold such property as against third parties or innocent purchasers.

Checks. (See Notes, etc.)

Collaterals. The holder of a note as collateral security for a debt stands upon the same footing as the purchaser. Property left in pledge or pawn may be sold at public sale to the highest bidder, upon thirty days' notice.

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 Secretary of State may grant charters for the corporations above enumerated in manner prescribed by law in the particular case. A charter for a private corporation is obtained by a petition to the superior court, setting forth the object, particular business, corporation name, capital, place of business, time for which incorporation is desired, not exceeding twenty years. The petition and order granting the same constitute the charter. In such corporations the liabilities of the stockholder is measured by the amount of unpaid stock subscription due by him. In the charter of many banks heretofore organized under special act of the General Assembly the rule of personal liability varies. In some banks stockholders are liable as partners: In others liability exists 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 stock and unpaid subscriptions thereon. The payment of 10 per cent of the capital stock is necessary before commencing business. General powers of corporations are conferred on all corporations organized in this state. All corporations organized under the laws of the State or doing business therein are required to register with the Secretary of State and pay a graded license fee, with a minimum of $10, maximum $600. Voluntary dissolution of a corporation may be granted by the Superior Court upon petition filed by the Corporation if authorized by two-thirds of capital stock. Lost stock certificates must be established by petition to Superior Court.

Costs. 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.

Courts. The term, jurisdiction, etc., of the several courts of the State are as follows: JUSTICE COURTS hold monthly sessions and have civil jurisdiction up to $100. In criminal matters they are only committing courts. COURTS OF ORDINARY hold their sessions monthly and have jurisdiction over wills, administration of estates, and of the conduct of administrators, executors and guardians. COUNTY COURTS have monthly and quarterly sessions. Their jurisdiction is limited to controversies not exceeding $300. CITY COURTS hold four sessions per annum, but the city court of Atlanta has six terms. The jurisdiction of city courts is unlimited except in matters of divorce, titles to land and administration of equitable relief. The municipal court of Atlanta, recently established, replaces the Justices Courts. Its jurisdictional limit is $2500. It holds two terms each month. SUPERIOR COURTS have jurisdiction of all suits and controversies and have exclusive jurisdiction in equity powers, divorce cases, and suits involving titles to land, and on the criminal side exclusive jurisdiction of all cases involving life or imprisonment in the penitentiary.

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 secured by the deed 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, only as to the interest paid on such debt.

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 all counties within this State, 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. Depositions may be taken within or without the state, without commission, before a notary public or any officer authorized to issue attachments. If within the state or if taken without the state, before any officer of the state or county where taken, authorized by laws of Georgia to attest deeds or take acknowledgments, upon 10 days' notice to opposite party. In taking answers to interrogatories, which must be authorized by a commission issued for such purpose by the court here, two commissioners must act. Commissioners must be disinterested and not related to either party, or connected with the case; attorneys of the parties are incompetent. None of the parties to the case, nor their agents or attorneys, can be present when the commission is executed. The witness can only write his answer in the presence of the commissioners. It is usual, and the better practice, for one of the commissioners to write the answers of the witness as they are given. Depositions may be written with the typewriter, and commissioners may adjourn their sittings from day to day. The following instructions for taking testimony are important: Instructions for taking answers to interrogatories: 1. Insert the commissioners' names in the commission; any two respectable citizens will do. 2. State the case as you find it. Then comes the caption, thus: State of..... (Here insert the county and State County of.....ss. where the commission is executed.)

By virtue of a commission from the.....court of..... county, we have caused the person in said commission named to come before us, who being duly sworn true answers to make to certain interrogatories thereto annexed, deposeth and answereth as follows: (Here insert answers of the witnesses to each interrogatory in order 3. Let the witness sign the answers; then say: "Answered, sworn to, and subscribed before us, this....day of.....19.... " 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.

Dower. In this State the wife is entitled to an estate for life in one-third of 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.

Executions. Must follow the judgment or decree from which they issue. They are good for seven years and may be renewed for a like period by entry nulla bona.

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 an 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 personalty, or both, to the aggregate of $1600. 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 replevy 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 or bankruptcy. 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.

Garnishments. This process may [be invoked in any case. 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. Any person may claim exemption from garnishment as to wages to the extent of $1.25 per day and one-half of the remainder.

Holidays. January 1st (New Year's Day), January 19th (Lee's Birthday), February 22nd (Washington's Birthday), April 26th (Memorial Day), June 3rd (Jefferson Davis' Birthday), July 4th (Independence Day), First Monday in September (Labor Day), December 25th (Christmas Day), Thanksgiving Day.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

Interest. The legal rate of interest in Georgia is 7 per cent, but 8 per cent is legal when contracted for in writing. Parties charging usury forfeit the excess if usury is set up. Usury has no present penalty in Georgia, except forfeiture of all interest paid upon the debt.

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 in the county of the defendant's residence. Unless such execution is recorded as so required within thirty days, its lien will only date from the time of record. (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 any one, 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 are only security for debts. They may embrace property in the mortgagor's possession, or to which he has a right of possession. They may cover a stock in bulk, but changing in specifics, and after acquiring property. No particular form is necessary, but it must be cleared that the instrument indicates a lien, describes the property 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 power of sale are valid in Georgia. Homestead and exemption may be waived in the mortgage. All mortgages on personal property must be recorded in the county where the mortgagor resides and the property is located. Mortgages on land must be recorded in the county where the land is situated.

Notaries. Commercial notaries, male or female, are appointed for four years by the superior courts, and for the state at large by the State Librarian. 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. Transferers of negotiable instruments warrant that they are the lawful holders, have the right to sell, that the instrument is genuine and that prior parties had capacity to contract. Bona fide purchasers of negotiable paper asking 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. Any draft, bill of exchange or check, drawn upon an institution or person with which the drawer has not sufficient funds on deposit to meet same, subjects the drawer to criminal liability.

Probate Law. (See Administration or 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 if improved land and wild land within two years.

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.

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.

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 exemplified copy of the will is presented. 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. A foreign will, executed according to the law of Georgia, will constitute a muniment of title to real property without being probated in this State, when recorded on the record of deeds in the country where the land lies, together with an exemplification of record admitting it to probate in another State, certified according to the Act of Congress

SYNOPSIS OF

THE LAWS OF IDAHO

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by Richards & Haga, Attorneys at Law, Boise. (See Card in Attorneys' List.)

Acknowledgments. All conveyances and other instruments required to be acknowledged in this State must be acknowledged, if within the State, before a judge or clerk of a court of record, a county recorder, a notary public, or a justice of the peace. If without the State, but within the United States, they must be acknowledged before any such officer, or a commissioner of deeds for this State, or before any officer authorized by the laws of this State or Territory to take such acknowledgment. If without the United States, they must be acknowledged before a minister or charge d'affairs of the United States, resident and accredited in the country where the acknowledgment is taken, before a consul of 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. Form of married woman's acknowledgment the same as that of a single person. (See Conveyances.)

Actions. There is but one form of civil action in this State. As 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.

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

Aliens. Anti-Alien bill prohibits aliens not eligible to citizenship and corporations, a majority of whose members are such aliens, from acquiring or holding real estate except to the extent and for the purposes prescribed by existing treaties between their countries and the United States, but permits such aliens to lease lands for not more than five years for agricultural purposes. Also prohibits such aliens from acting as guardian or trustee for any real estate and provides that lands hereafter conveyed to such aliens shall escheat to the State. (Law 1923, p. 160.)

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 in fee or for life.

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 assignee is 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 neugatory by act of defendant. Assignee must furnish bond, with two sufficient sureties.

Attachments. Attachments may be had in actions on judgments or contracts express or implied where defendant is a non-resident or the debt is unsecured. Plaintiff at the time of issuing the summons or any time afterwards may obtain the attachment upon filing affidavit and undertaking and notice of attachment must be published.

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 Commissioner of Finance. 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. (Laws 1925, pp. 190–235.)

Bills of Lading. Uniform act recommended by the American Bar Association.

Blue Sky Law. Idaho has a blue sky law governing corporations, unincorporated associations and partnerships, domestic or foreign, dealing in stocks, bonds, and other securities, excepting United States bonds, State or municipal securities in Idaho, and Idaho real estate mortgages. This law requires the filing of various statements, accounts and other papers, and makes it unlawful to do business in the State without compliance. (Compiled Statutes 1919, secs. 5305-5324, Laws 1921, pp. 29, 297, 375, Laws 1923, p. 125.)

Collaterals. No statutory regulation.

Community Property. All property acquired after marriage other than by gift, bequest, devise, or descent, is community property. The personal earnings of the wife and the income from her separate property are community property unless she is living apart from her husband.

Contracts. A written instrument is presumptive evidence of a consideration.

Conveyances. Real estate is conveyed by instrument in writing, subscribed by the party or his authorized agent in writing. The community property can be conveyed or incumbered only by husband and wife joining in the execution and acknowledgment of the instrument. 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. Separate property of wife not liable for debts of her husband, wife is not liable as surety unless the obligation is for her benefit or benefit of her separate 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 three (3) 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, containing: 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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 state also in their articles: 1. The kind of road, telegraph or telephone line intended to be constructed. 2. The estimated length of the road or line. 3. 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. 4. Whether meetings of the board shall be held within or without the State. 5. 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. All corporations, except insurance, non-productive mining companies, co-operative telephone and irrigation companies, must pay between July 1st and September 1st of each year, a license fee based on the amount of authorized capital stock, varying from $10 to $150; a failure to make payment by September 1st entails a penalty of $10, and a failure to make payment by November 30th entails a loss of charter for domestic corporations and a loss of the right to do business within the State for foreign corporations. Between July 1st and September 1st, all corporations must make an annual report, and a failure to do so takes away such exemptions as are mentioned above.

Corporation, 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 county recorder of 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. Designation of agent must be filed with Clerk of District Court instead of County Recorder.

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; and he may hold such special terms as he deems proper and necessary. District courts have original jurisdiction in all civil cases. Probate courts are held in each county continuously, and have jurisdiction up to $500, in civil cases and concurrent jurisdiction with justice's courts in all criminal cases. Justices' jurisdiction, $300.

Curtesy does not exist.

Days of Grace abolished by statute.

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

Descent and Distribution of Intestate Estates. If a person dies intestate, surviving spouse takes all the community property, both real and personal.

On death intestate separate property, both real and personal, descends as follows: If decedent leaves spouse and one child, each entitled to one-half of decedent's separate property; if more than one child, surviving spouse gets one-third and remainder goes in equal shares to children of decedent and to the lawful issue of any deceased child by right of representation, but if no children of decedent living at his death, remainder goes to all of his lineal descendants, and if they are in same degree equally, otherwise according to right of representation; if decedent leaves no surviving spouse but leaves issue, the whole estate goes to such issue or their descendants if deceased; if decedent leaves no issue, one-half goes to surviving spouse and other half to decedent's father and mother in equal shares, or if either be dead, the whole goes to the other; if no issue nor husband or wife, estate goes to father and mother; if neither issue, husband, wife, father nor mother, in equal shares to brothers and sisters of decedent and to their children by right of representation; if spouse survives decedent and there are neither issue, father nor mother, whole estate goes to such spouse; if decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, estate goes to next of kin in equal degree, computed according to rules of civil law; if decedent leaves no heirs, property escheats to State.

Dower does not exist. (See Curtesy and Community property).

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

Employer's Liability Law. Provides for damages not to exceed $5,000 for injuries to employes caused by employer's negligence. (See Workmen's Compensation Act).

Executions issue at any time within five years after judgment. The only stay is by appeal, with supersedeas bond. One year allowed for redemption from execution and foreclosure sale.

Exemptions. Homestead, not exceeding $5,000, if declaration of homestead is 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 of 160 inches, when actually used in irrigation; also crops growing or grown on fifty acres of land, leased, owned or possessed by 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 $500, and his pipes, cars, etc., of the value of $200; pack animals and equipments, not exceeding $250; team, wagon, etc., of drayman; seventy-five per cent of 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 and 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 or execution issued on judgment for purchase price.

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.

Guaranty, Title and Trust Co. May furnish abstracts, act as surety, trustee, fiscal agent. Paid up capital of $25,000 required. Capital deemed security for the performance of their duties.

Holidays. January 1st, February 22nd, May 30th, June 15th, (Pioneer Day), Fourth of July, first Monday in September (Labor Day), October 12th, November 11th, Thanksgiving Day, Christmas, Sundays and any day on which a general election is held.

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

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 a rate not to exceed 10 per cent per annum. Judgments bear interest at the rate of 7 per cent per annum. Compound interest allowed.

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 five years. Justice's court judgments become liens when certified and recorded. May be revived by issuing execution within limitation.

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. 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 for Suits. Judgments six years; written contracts or for real property, five years; contracts or obligations not founded on writing including open accounts, four years; trespass, trover replevin and fraud, three years; personal injuries, two years; other relief, four years. Revivor: by acknowledgment of debt in writing or part payment of principal or interest.

Married Women. All property, real or personal, acquired before marriage and acquired after marriage by gift, bequest, devise, or descent, are the wife's separate property; all other property acquired after marriage, common property; wife must record inventory of separate personal property. No estate as tenant by courtesy allowed the husband nor dower to the wife.

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. Must be filed and a minute record made by recorder, unless mortgagee has possession. Survives as long as the debt. Mortgages are discharged by a satisfaction duly executed and recorded, or by entry on margin of the record, witnessed by recorder.

Negotiable Instruments. Negotiable instruments are governed by the rules of the Uniform Negotiable Instrument Law, as recommended by the American Bar Association. (See Laws 1903, p. 380.)

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 therefore, 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. The commission is good throughout the State.

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.

Protest. (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. 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. Property may be redeemed within one year after sale, on paying purchaser amount paid on sale and 10 per cent additional. Property may be redeemed by successive redemptioners within sixty days from last redemption, and within one year from sale, by paying an additional 4 per cent. In cases of tax sales, the owner may redeem in four years

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

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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.

Sales. Uniform sales Act recommended by American Bar Association.

Seals. The distinctions between sealed and unsealed instruments are abolished. Written contracts presumptive evidence of consideration.

Taxes. All property must be assessed with reference to its value at twelve o'clock noon on the second Monday of January of each year at its full cash value, and the owner or other claimant of the property shall have the same listed for taxation, and such taxes are a lien from and after that date. If taxes are not paid by the fourth Monday in December they become delinquent, but half of the taxes may be paid before said date and the remaining half before the fourth Monday in June without delinquency. A penalty of 2 per cent is added on all delinquent taxes. Delinquency entries are made as of the first Monday in January in the succeeding year by the tax collector and have the force and effect of a sale to the county. They bear interest at the rate of 10 per cent per annum from date and are not assignable. Redemption may be made within four years from the date of such entry. Notice of expiration of redemption period must be given by tax collector not less than three, nor more than five months, before such expiration in order to entitle county to deed. A statute applying to taxes for the years 1920–1922 inclusive, permits redemption from delinquent taxes on payment of the amount of the original tax, less penalties with 7 per cent interest and the same statute permits redemption from tax deed as long as the property is held by the county upon payment of the amount of the original tax, less penalties together with 7 per cent interest and any tax subsequently assessed with like interest. (The constitutionality of this statute has been upheld by the Supreme Court of Idaho in the case of Washington County vs. Paradis, 38 Idaho 364,222, Pac. 775.) (Compiled Statutes, 1919, Chap. 144, Laws 1921 p. 520, Laws 1923, pp. 49, 236.)

Trust Companies. (See Guaranty Companies.)

Warehouse Receipts. The Uniform Warehouse Receipts Act, recommended by the American Bar Association.

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. One-half of community property may be disposed of by will to his, her or their children, but not to exceed one-fourth to a parent or parents of either spouse.

Workmen's Compensation Act. See Chapter 236 Compiled Statutes 1919, amended Laws 1921, p. 474.)

SYNOPSIS OF

THE LAWS OF ILLINOIS

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by Michael J. Stanton, Attorney at Law, 538 S. Clark Street, Rand McNally Bldg., Chicago. (See Card in Attorney's List.)

Acknowledgments. Of deeds of real estate and other instruments, may be taken before the following officers: Within this State before a master in chancery, notary public, United States commissioner, county clerk, justice of the peace, any court of record having a seal or any judge, justice, clerk, or deputy clerk thereof. Without this State, and within the United States, its territories, dependencies, or the District of Columbia, before a justice of the peace, notary public, master in chancery, United States commissioner, commissioner to take acknowledgments of deeds, mayor of a city, clerk of a county, or before any judge, justice, clerk or deputy clerk of the supreme, or district court of the United States, or before any judge, justice, clerk or deputy clerk, prothonotary, surrogate, or registrar of the supreme, circuit, superior, district, county, common pleas, probate, orphans or surrogate court of any of the States, Territories, or dependencies of the United States. In any dependency of the United States, such acknowledgement or proof may also be taken or made before any commissioned officer in the military service of the United States. When such acknowledgment or proof is made before a notary public, United States commissioner, or commissioner of deeds, it must be certified under his seal of office. If taken before a mayor of a city, it must be certified under the seal of the city; if before a clerk, deputy clerk, prothonotary, registrar, or surrogate, under the seal of his court; if before a justice of the peace or a master in chancery, there must be added a certificate of the proper clerk under the seal of his office setting forth that such person was a justice of the peace or master in chancery at the time of taking such acknowledgment or proof. An acknowledgment or proof of execution may be made in comformity with the laws of the State, Territory, dependency, or district where it is made. Without the United States, before any court of any republic, dominion, state, kingdom, empire, colony, territory, or dependency having a seal, or before any judge, justice, or clerk thereof, or before any mayor or chief officer of any city or town having a seal, or before a notary public or commissioner of deeds, or any ambassador, minister or secretary of legation, or consul of the United States, or vice-consul deputy consul, commercial agent, or consular agent of the United States. The acknowledgment of a conveyance by a married woman may be made and certified as if she were single. An acknowledgment taken by any one interested in the conveyance is void.

Actions. Forms of action and pleadings are substantially as at common law except in justice courts and the municipal court of Chicago, wherein the practice has been much simplified. A non-resident is required to give a bond for costs.

Administration of Decedents' Estates. Letters testamentary issue to executor named in will, if he be a resident. If there be no will, or no executor named, or the executor is disqualified, or refuses to act, administration is granted to surviving husband, or wife, next of kin, or some competent person. The surviving husband or wife, or the person nominated by him or her, has preference. If none of the above named applies within sixty days from death of deceased, then administration is granted to the public administrator of the proper county. The administrator must be a resident of the State. A foreign executor or administrator, within the United States, may prosecute suits to enforce claims or to sell lands to pay debts. The Uniform Foreign Probate Act is in force in Illinois. The executor or administrator must file an inventory within three months from the date of his appointment and must fix upon a term of court, within six months from the time he qualifies, for the adjustment of claims, and publish notice thereof. The claimant should produce and file his verified claim, which, if not objected to, may be allowed without further evidence. If objected to, the claim is set down for trial. If the claim is not presented at the time fixed upon, it may afterwards, within one year, from the date of the issuance of letters of administration, be filed with the clerk, whereupon a summons issues against the executor or administrator, and the matter is heard at a subsequent term. All claims not exhibited within one year from granting of administration are barred. Claims are classified as follows: 1. Funeral expenses and cost of administration. 2. Widow's or children's award. 3. Expenses of last illness, including physician's bill, and demands due common laborers or household servants of deceased for labor. 4. Debts due common-school or township funds. 5. Trust funds. 6. All other debts. Claims have priority of payment in the above order.

Affidavits. Within this State oaths and affirmations may be administered by any judge, justice of the peace, master in chancery, clerk of a court, police magistrate, or notary public, in their respective jurisdictions. Without the State the oath or affirmation may be administered by any officer authorized by the laws of the particular State, and if such officer has a seal, his certificate under his official seal is received as prime facie evidence of his authority.

Aliens. The present law went into effect July 1, 1897. It does not affect the rights of aliens as to personal property, who still take the same as citizens. Its provisions are subject to treaties made by the United States with foreign countries. All aliens, subject to certain restrictions mentioned in the act, may acquire and for a limited time hold real estate situated in this State by deed, devise, or descent, and may transfer, devise or encumber it.

Arrest and Bail. 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 prescribed by law, or in cases where there is a strong presumption of fraud.

Assignments. The operation of the Illinois Act relating to voluntary assignments for the benefit of creditors has been suspended by the national bankruptcy law.

Attachments. A creditor, resident or non-resident, whose claim is due, may bring attachment in a court of record if the amount exceeds $20, and in justice court for any amount not exceeding $200, on any of the following grounds: 1. Where the debtor is a non-resident of this State. 2. Where the debtor conceals himself, or stands in defiance of an officer so that process can not be served upon him. 3. Where the debtor has departed from this State with the intention of having his effects removed from this State. 4. Where the debtor is about to depart from this State with the intention of having his effects removed from this State. 5. Where the debtor is about to remove his property from this State to the injury of such creditor. 6. Where the debtor has, within two years preceding the filing of the affidavit required, fraudulently conveyed or assigned his effects, or a part thereof, so as to hinder or delay his creditors. 7. Where the debtor has within two years prior to the filing of such affidavit fraudulently concealed or disposed of his property so as to hinder or delay his creditors. 8. Where the debtor is about fraudulently to conceal, assign, or otherwise dispose of his property or effects so as to hinder or delay his creditors. 9. Where the debt sued for was fraudulently contracted on the part of the debtor, provided the statements of the debtor, his agents or attorney, which constitute the fraud, shall have been reduced to writing, and his signature attached thereto by himself, agent, or attorney. The creditor must give bond in double the amount of the claim. Real estate or personal property may be attached or funds garnished. The property or funds may be released by the debtor giving a forthcoming bond, or entering into a recognizance in court to pay the judgment.

Banks and Banking. Under the state constitution stockholders have a double stock liability, and every bank must make, under oath, and publish each quarter a full and accurate statement of its affairs.

An Act to revise the law in relation to banks and banking was passed and approved June 23, 1919, and ratified by referendum at the election of November 2, 1920. Banks may be formed under the statute for the purpose of discount and deposit, buying and selling exchange, and doing a general banking business, except the issuing of bills to circulate as money; may loan on both personal and real estate security, and may accept and execute trusts. An association of persons, as hereinafter set forth may organize a bank by filing a statement with the Auditor. The minimum number of persons in such associations is fixed according to populations as follows:

Populations	No. of Persons
10,000 or less	5
10,000 to 25,000	10
25,000 to 50,000	15
50,000 to 100,000	20
Over 100,000	25

All such persons must be residents of place where bank is to be established and in places exceeding 100,000 population, 20 persons of the association must reside within 3 miles of the proposed location of the bank.

Accompanying the application must be a statement made before some officer authorized to acknowledge deeds giving the net financial worth of each of the members of such associations together with at least three references as to personal character of each individual named therein. Whereupon the Auditor issues a permit to organize. The shares shall be $100 each. After the permit to organize is issued and the stock fully subscribed, the stockholders meet, fix the number of directors and elect the directors who shall manage the corporation for one year, or until their successors are elected. At the election of directors, stockholders have the right of cumulative voting. The directors elect one of their number President, appoint the necessary Officers and employes, fix their salaries and make by-laws. Each director shall file with the State Auditor an affidavit that he will faithfully perform the duties of his office in accordance with law; that he is the owner in his own right, of ten shares of the stock of the bank, free from incumbrance. The directors must cause suitable books to be kept and file with the Auditor a list of stockholders and a copy of any other records the Auditor may require. Unless another day is fixed by the by-laws of the Association, the stockholders shall meet the first Monday in January and elect directors. Vacancies are filled by vote of two-thirds of the directors. Each director must own ten shares of the stock of the bank and file a certificate or certificates thereof with the Cashier, to be held during his term as director. A quorum of the directors must meet once each month. Any officer, director or employe who shall make a false statement to any official authorized to examine the affairs of the bank, upon conviction shall be punished by imprisonment of not less than one or more than ten years. When the State Auditor is satisfied on examination that the bank has been duly organized and its stock fully paid, he issues a certificate that the bank is authorized to commence business, which certificate must be filed with the Recorder of Deeds of the county in which the bank is to carry on its business.

The double liability of stockholders applies to all debts contracted while they hold stock in the bank and is not released by an assignment of the stock. The President or Cashier must, within thirty days after organization file with the Recorder of Deeds, a complete list of stockholders and their holdings and record thereafter a certificate of all transfers within ten days after such transfers. A statement of the resources and liabilities of the bank must be filed with the State Auditor when required by him. The Auditor must call for such report at least once each three months. This report must be published in a newspaper of the city or town where the bank is located.

The State Auditor shall appoint a suitable person, not connected with the bank, to make a thorough examination of the affairs of each bank once a year, and report the same to the Auditor. A bank may hold only such real estate as may be necessary for a banking house or such as may be acquired in the collection of debts. Real estate acquired for debts must be disposed of within five years. No bank

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

may establish branches. The total liability for money borrowed of any person, corporation or firm (including the members of the firm) to any banking association shall at no time exceed 15 per cent of the capital and surplus (not including undivided profits) of such bank and shall in no event exceed 30 per cent of the capital stock actually paid in. Provided, however, that money borrowed within the meaning of the Act shall not include (1) the discount of bills of exchange drawn in good faith against actually existing values; (2) the discount of commercial or business paper actually owned by the person negotiating the same; (3) the purchase of, or loaning money in exchange for, evidences of indebtedness which shall be secured by mortgage or trust deed upon productive real estate, the value of which, exclusive of buildings, as ascertained by the oath of two disinterested appraisers, is double the amount of the principal debt secured; and (4) the purchase of, or loaning money in exchange for, evidences of indebtedness secured by a written pledge covering live stock, the president, vice-president or cashier of such bank or association certifying at the time of such purchase or loan that the value of such live stock is double the principal debt secured; but in no event shall the liabilities of any such person, corporation or firm to such bank, exceed the amount of its capital stock, or 25 per cent of its deposits. Directors are made personally liable for any violations of this provision to the extent of the loss occasioned thereby to the bank, its stockholders or any other party. No loan shall be made to the President, Vice-President or any employe of the bank until the loan shall have been approved by the Board of Directors.

The minimum amounts provided for the capital stock of banks are as follows. In cities, towns and villages that have not exceeding five thousand inhabitants, $25,000; between five thousand and ten thousand, $50,000; between ten thousand and fifty thousand, $100,000; over fifty thousand, $200,000. Upon impairment of the capital stock the Auditor may require assessments of stockholders or a reduction of the capital. If he shall deem the bank is being conducted in an unsafe, fraudulent or illegal manner, he may file a bill for an injunction dissolution and receiver, but such a bill can be maintained only in the name of the Auditor. Upon deficiency of assets, the court may require, in such a suit, that the receiver proceed against the stockholders on their stock liability. There are provisions for consolidation, change of name and voluntary dissolution. All banking associations heretofore organized by general or special Act, are made subject to all the provisions of this Act.

After January 1, 1921, no natural person or natural persons, firm or partnership shall transact the business of banking or the business of receiving money upon deposit, or shall use the word "Bank" or "Banker" in connection with said business; provided, that nothing herein contained shall be construed to prohibit banks incorporated under the laws of this State or of the United States from appointing natural persons as agents to receive deposits of savings in and through the public schools. Any person violating the Act is guilty of a misdemeanor and is subject to a fine not exceeding $1,000, or imprisonment in the penitentiary for one year. A banker is liable to fine and imprisonment if he receives a deposit after he knows the bank has become insolvent and thereby the depositor suffers loss.

One drawing and delivering a check, draft, or order on a bank with intent to defraud, and knowing at the time that he had not sufficient funds in or credit with the bank to pay the check, draft or order in full is guilty of a misdemeanor and is subject to a fine of $1,000 or imprisonment for one year, or both.

Bills of Lading. The Uniform Bills of Lading Law is in force in Illinois.

Blue Sky Law went into effect June 10, 1919, governing the sale of stocks of corporations. Securities are divided into four classes. Certain securities can be sold only after a full statement in regard thereto has been filed with the Secretary of State and a permit issued The law is stringent. Copies of the law and forms for use thereunder can be obtained by writing to the office of the Secretary of State, Springfield, Ill The act is entitled "The Illinois Securities Law."

Chattel Mortgages. No mortgage, trust deed, or other conveyance of personal property having the effect of a mortgage or lien, is valid against third persons, unless possession be delivered to, and remain with the grantee; or the instrument provides for the possession of the property to remain with the grantor, and the instrument is acknowledged and recorded. The instrument must be acknowledged, in counties having a population of less than two hundred thousand, before a justice of the peace, police magistrate, a clerk or deputy clerk of a municipal court, or county judge of the county in which the mortgagor resides; in counties having a population of 200,000, or more, before a justice of the peace of the town or precinct, or if there be no justice of the peace, before the clerk or deputy clerk of the municipal court in the district where the mortgagor resides. If the mortgagor is a non-resident of the State, the mortgage may be acknowledged before any officer authorized by law to take acknowledgments of deeds. After acknowledgment and within ten days after its execution the instrument must be filed for record with the recorder of the county in which the mortgagor resides when the instrument is executed, or, in case of a non-resident of the State, then in the county where the property is situated. The mortgage is a valid lien until ninety days after the maturity of the entire debt or obligation, not exceeding three years from the filing of the mortgage, and may be renewed for one year. A note secured by chattel mortgage, must state on its face that it is so secured, otherwise the mortgage is void. A mortgage may be released on the margin of the record, or by a release deed. A mortgage on a stock of goods permitting mortgagor to retain possession and buy and sell is void as to creditors.

Commercial Paper. (See Negotiable Instruments.)

Consignments. Agreements to sell on consignment are valid. If a commission merchant, or party selling on commission, converts the property consigned, or after demand fails to account for the proceeds, he is subject to fine and imprisonment, and liable for double the value of the property so converted.

Conveyances. (See Deeds.)

Corporations. Corporations, except for charitable, educational, penal, and reformatory purposes, may be organized only under general laws. (Const. art. XI, 1.) In all elections of directors every stockholder has the right to vote, in person or by proxy, for the number of shares of stock owned by him, or may cumulate his votes. (Const. art. XI, 13.)

A new act relating to corporations for profit, became in force July 1, 1919. Corporations may be created under the act for any lawful purpose, except for banking, insurance, real estate, brokerage, the operation of railroads, or the business of loaning money; and may be organized also, for any *one* of the following purposes: (1) "building corporations," for acquiring, owning, erecting, leasing, or operating only one building and the site therefor of not more than 80,000 square feet of land; (2) "agency and loan corporations," for the purpose of acting as agents for others in the purchase, sale, renting, and management of real estate and leasehold interests in the operation of an insurance agency business, in the negotiation of loans on real estate and leasehold interests, of lending money on bonds or notes secured by mortgages or trust deeds on real estate or leaseholds or on the mortgage bonds of industrial or railroad companies or of any public service corporation, or on any State, municipal, or quasi-municipal bonds, or for the purpose of buying, selling, pledging, mortgaging, or otherwise dealing in any of such securities; (3) "real estate improvement corporations," for the purpose of owning land, erecting residences thereon, and selling or leasing such land or residences, which land so owned shall be situated only in the county in which the corporation's principal office is located.

Corporations under the act have the following rights, powers, and privileges: (1) succession; (2) to sue and be sued in its corporate name; (3) common seal :(4) capital stock, with or without a par value, and divided into classes; (5) to acquire, and to own, possess, and enjoy so much real and personal property as may be necessary for the transaction of the business of such corporation, and to lease, mortgage, pledge, sell, convey, or transfer the same; (6) to own, purchase, or otherwise acquire, whether in exchange for the issuance of its own stock, bonds, or other obligations or otherwise, and to hold, vote, pledge, or dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign; (7) to borrow money at such rate of interest as the corporation may determine without regard to or restrictions under any usury law of this State and to mortgage or pledge its property, both real and personal, to secure the payment thereof; (8) to elect officers, appoint agents, define their duties and fix their compensations; (9) to lease, exchange, or sell all of the corporate assets with the consent of two-thirds of all of the outstanding capital stock of the corporation at any annual meeting or any special meeting called for that purpose; (10) to make by-laws not inconsistent with the laws of this State for the administration of the business and interests of such corporation; (11) to conduct business in this State, other States, the District of Columbia, the Territories, possessions, and dependencies of the United States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage, and convey real and personal property outside of this State necessary and requisite to carry out the object of the corporation; (12) in time of war to transact any lawful business in aid of the United States in the prosecution of war, to make donations to associations and organizations aiding in war activities, and to loan money to the State or Federal Government for war purposes; (13) to cease doing business and to surrender its charter; (14) to have and exercise all the powers necessary and convenient to carry into effect the purpose for which such corporation is formed.

The right of a corporation to hold the stocks of other corporations is restricted to cases where the effect thereof shall not be in restraint of trade, to lessen competition, nor to create a monopoly. No corporation, except as specifically provided herein, shall be organized under this act for the purpose of acquiring or owning real estate. No corporation under the act shall, except as provided, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes, or other evidences of debt, or receiving deposits of money, or foreign coins, or buying and selling bills of exchange, or issuing bills, notes, or other evidences of debt for circulation as money; but corporations created, or to be created under the provisions of the act, to buy, sell, or otherwise deal in notes (not including the discounting of notes), open accounts, and other similar evidences of debt (not including bills of exchange), shall not be considered within this prohibition. No corporation shall be created under this act to deal in commercial paper in the exercise of the functions of bank discount.

The board of directors must consist of at least three persons, who shall be stockholders and one of whom must be a resident of this State. The directors exercise the corporate powers of the corporation. They may hold meetings and transact business outside of this State. They elect officers, adopt by-laws, and may appoint an executive committee. The name of a corporation must indicate that it is a corporation. If the name of a person or copartnership is used, it must be followed by the word "corporation," "incorporated," "limited," or their abbreviations. The corporation must maintain an office or place of business in this State, with a resident officer or agent in charge. The Secretary of State must be kept informed of any change of address of such office or place of business.

Each share of stock when issued shall have stamped thereon the amount actually received by the corporation for such stock, either in cash, property, services rendered, or expenses incurred. Each certificate must contain a statement of the rights of the holder, whether the stock has been fully paid, and if not what per cent of it has been paid. When additional payments are made they must be stamped on the certificate. Shares without par value shall be represented by certificates which shall state the number of shares, the name of the holder and the total number of shares the corporation is authorized to issue. All stockholders' meetings must be held within this State. Directors are elected at the regular annual meeting of the stockholders. No stock can be voted which shall have been transferred on the books of the corporation within ten days prior to such meeting. No proxy is good after eleven months from its execution, except where the stock is pledged as security for a debt to the person holding the proxy.

Stockholders are liable to creditors, after exhaustion of the assets of the corporation, only to the amount unpaid on the shares held by them. An assignee of unpaid stock, with notice, is liable as though he had been the original subscriber; but only the real owner is liable.

Foreign Corporations. Each foreign corporation organized for pecuniary profit (except banking, insurance, building and loan, and surety companies), not now licensed to do business in this State, shall before it transacts any business or maintains an office in this State, procure a certificate of authority therefor from the Secretary of State. No foreign corporation shall engage or continue in any kind of business in this State, the transaction of which by domestic corporations is not permitted by the laws of this State. Each licensed foreign corporation shall keep on file in the office of the Secretary of State a copy of its charter and all amendments thereto; and also a verified statement giving the location of its principal office in this State and the name and address of an agent on whom service of process may be had. No foreign corporation doing business in this State without a license shall be permitted to maintain any suit at law or in equity in any of the courts in this State upon any demand, whether arising out of contract or tort; and all such corporations shall be liable by reason thereof to a penalty therefor of not less than $250 nor more than $1,000, to be recovered in any court of competent jurisdiction, in a civil action to be begun and prosecuted by the Attorney-General.

Each corporation including railroads, domestic and foreign, other than homestead associations, building and loan associations, banks, religious corporations, insurance companies, and corporations not for pecuniary profit shall make a report in writing to the Secretary of State between February 1 and March 1 of each year for the calendar year ending December 31, preceding, on forms to be prescribed and furnished by the Secretary of State. Such report shall give the address of the corporation, officers and directors in this State by street and number; and also shall disclose such facts as necessary to enable the Secretary of State to ascertain the proportion of its capital stock represented by business transacted and tangible property located in this State and such other information as may be necessary or appropriate in order to assess the annual license fee or franchise tax.

Fees and Taxes. To the Secretary of State on filing a certificate of incorporation one-twentieth of 1 per cent upon the amount of authorized capital stock, but in no event less than $20. If the stock has no par value, for the purpose of fixing the fee the shares are considered as having a par value of $100 each. A like fee upon any subsequent increase. Upon the filing of a certificate of amendment additional fee of $20. A foreign corporation, other than an insurance company or building and loan company, upon obtaining a certificate to do business in Illinois pays the same fees upon the amount of its capital stock represented by business transacted and tangible property in Illinois as similar domestic corporations pay upon incorporation. If the stock of a foreign corporation has no par value, for the purpose of fixing fees and taxes the shares are considered to have a par value of $100 each. A domestic corporation or a foreign corporation licensed to do business in Illinois (except insurance companies), and which are required to make annual reports, must pay to the Secretary of State an annual license fee or franchise tax amounting to 5 cents on each $100 of the proportion of its authorized capital stock represented by business transacted and property located in this State, but in no event shall any such license fee or franchise tax be less than $10 for any one year. If it appears from the annual report that the corporation has no tangible property located in this State, and is transacting no business in this State, the following franchise tax must

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

be paid annually: on capital stock of $50,000 or less, $10; between $50,000 and $200,000, $15; between $200,000 and $500,000, $20; between $500,000 and $1,000,000, $50; between $1,000,000 and $10,000,000, $200; over $10,000,000, $1,000; stock of no par value being considered to have a par value of $100 per share. The franchise tax is payable on July 1 for the succeeding twelve months. If a corporation fails to make an annual report within the time required, the Secretary of State assesses a franchise tax on the best available information, adding a penalty of 10 per cent on the amount of such assessment. In case a corporation fails to file an annual report or pay its franchise tax as required by the act, the Attorney-General may take proceedings to forfeit its charter. No corporation required to pay a franchise tax or fee under the laws of this State shall transact any business in this State or maintain any action at law or suit in equity, unless such corporation shall have paid such franchise tax or such fees when the same become due and payable. Corporations are taxed on their tangible property, real and personal, within the State, and also upon the fair cash value of their capital stock, including franchises, over and above the assessed value of their tangible property. Shares of stock of domestic corporations, whose tangible property or capital stock is taxed, are not subject to taxation in the hands of owners.

A corporation organized for the purpose of accepting and executing trusts may be appointed assignee or trustee by deed, and executor, guardian, or trustee by will, and any court may appoint such company receiver, assignee, guardian, conservator, executor, administrator, or other trustee, provided such appointment apply to the estate only and not to the person. Such corporation is not generally required to give bond for the performance of a trust, but it is required to deposit with the Auditor of Public Accounts $200,000 in bonds of the United States, or in municipal bonds of this State, or real estate mortgages, and to make a statement, and file reports with the Auditor annually. There are special acts also as to the organization of corporations not for pecuniary profit, religious corporations, loan associations, co-operative associations for profit, insurance, etc. Corporations, foreign or domestic, under certain restrictions, may do a surety business.

Courts. Supreme court (seven judges); four appellate courts (intermediate court of appeals, three judges each); circuit courts (in Cook County also superior court of equal jurisdiction); criminal courts; county courts (which also exercise probate jurisdiction in counties having less than 70,000); probate courts (in counties having over 70,000); municipal courts (Chicago has a municipal court with a chief justice and thirty-six associate judges and special practice); and justice courts.

Days of Grace are abolished. (See Negotiable Instruments.)

Deeds conveying land should be signed, sealed, and acknowledged by grantor. Scrawl seal is sufficient. No subscribing witnesses are required. Statutory forms of warranty and quit claim deeds and mortgages are provided. The words employed are (1) conveys and warrants, (2) conveys and quit claims, (3) mortgages and warrants. No deed releases the right of homestead unless it contains a clause substantially as follows: "Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois," in which case the certificate of acknowledgment should contain the clause, "including the release and waiver of the right of homestead." To release dower the husband or wife must join in the conveyance, except in the case of a mortgage for purchase money; otherwise the husband and wife may convey as unmarried. Deeds and other instruments affecting real estate should be recorded in the county where the real estate is situated; until so recorded they are void as to creditors and subsequent purchasers without notice.

Depositions. In chancery cases if the witness resides in the county, depositions may be taken on five days' notice; otherwise on ten days' notice and one day in addition for every fifty miles. At law, on like ten days' notice, where the witness resides in another county or is about to depart from the state. Where the witness resides out of the county or state, the deposition may be taken before a notary public or commissioner on a commission issued on ten days notice, either on written or oral interrogatories; one day additional notice of the time and place of taking the deposition being required for each one hundred miles. If a witness subpoenaed to give his deposition before a notary public or other officer under commission issued by a court of this State, or of any other State or country, declines to appear or testify he may be cited before the circuit court of the county where he resides and be compelled to appear, testify, and produce documents.

Descent and Distribution. Property in this State, real and personal, of residents or non-residents dying intestate, descends and is distributed as follows: 1. To the children and their descendants equally, the descendants of a deceased child or grandchild taking the share of their parents in equal parts. 2. When there is no child, nor descendant of a child, and no widow or surviving husband, then to the parents, brothers, and sisters and their descendants equally, allowing to the parents, if living, a child's part, or the survivor a double portion; and if there is no parent living, then to the brothers and sisters and their descendants. 3. When there is a widow or surviving husband, and no child or descendant of a child, one half of the real estate and the whole of the personal estate goes to the widow or surviving husband absolutely, and the other half of the real estate descends as in other cases where there are no children or descendants of children. 4. When there is a widow or surviving husband, and also a child or descendants of a child, the widow or surviving husband receives one-third of the real estate and one-third of the personal estate absolutely provided dower is waived (see Dower and Curtesy). 5. If there is no child or descendant of a child, and no parent, brother, or sister, or descendant of parent, brother, or sister, and no widow or surviving husband, the estate descends in equal parts to the next of kin in equal degree (computing by the Civil Law), there being no representation among collaterals, except with descendants of brothers and sisters, and no distinction being made between kindred of the whole and the half blood. 6. In case of a widow or surviving husband, and no kindred, the whole estate goes to the widow or surviving husband.

Dower. A surviving husband has dower (i. e., life interest in a third part of all lands whereof deceased was seized of an estate of inheritance during marriage) the same as a widow. Equitable estates, and land contracted for before death, are subject to dower. If dower is waived, surviving husband or wife takes one third of the real estate and personal estate absolutely. Dower may be barred by jointure assented to; by devise, unless widow or surviving husband renounces benefit of devise within one year from date of letters of administration by divorce as to the party in fault; and by abandonment coupled with adultery. There is no dower in land as against a purchase-money lien The husband or wife may renounce any devise under the will of the other and take if there be children, one third of the real estate, and one-third of personal estate, or, if no children, one-half of both real and personal estate absolutely.

Executions. (See Judgments and Executions.)

Executors and Administrators. (See Administration.)

Exemptions. There is a homestead exemption to the extent of $1000. It may be extinguished by conveyance joined in by husband and wife properly acknowledged. (See Deeds.) The following personal property is exempt: 1. The necessary wearing apparel, Bibles, school books, and family pictures. 2. One hundred dollars worth of other property, to be selected by the debtor, and in addition, when the debtor is the head of a family and resides with the same, $300 worth of other property, to be selected by the debtor. Exemptions can not be claimed out of partnership property. The wages of an employee being the head of a family and residing with the same are exempt from garnishment to the amount of $15 per week.

Frauds, Statute of. The following contracts should be in writing: 1. A promise of an executor or administrator to answer any debt or damages out of his own estate. 2. A promise to answer for the debt, default, or miscarriage of another. 3. An agreement made in consideration of marriage. 4. An agreement not to be performed within one year. 5. Any contract for the sale of lands, or any interest therein for a longer term than one year. 6. Express trusts relating to real estate. "A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards is not enforcible by action, unless the buyer accepts part of the goods or choses in action so contracted to be sold or sold, and actually receives the same, or gives something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf. The act applies to sales for future delivery and to goods to be obtained or manufactured by the seller, but not to sales of goods to be manufactured on special order if they be not suitable for sale to others in the usual course of business."

Garnishment. The funds or property of a debtor in the possession of a third party may be garnished in an attachment suit, or in a separate proceeding after judgment has been obtained against the principal debtor. (See Attachments.)

Holidays, Legal. January 1st, February 12th, February 22d, May 30th, July 4th, October 12th, December 25th, first Monday in September (Labor Day), Thanksgiving Day, and Tuesdays next after the first Mondays in November in even years (election days), November 11th, Armistice Day; also every Saturday from 12 o'clock noon to 12 o'clock midnight. Where holidays fall on Sunday, the day following.

Husband and Wife. (See Married Women.)

Interest. Extreme contract rate, 7 per cent, except as to corporations, no limit as to corporations; legal rate, 5 per cent. Interest is allowed at the legal rate on moneys after they become due on any bond, bill, promissory note, or other instrument in writing; on money loaned or advanced for the use of another; on money due on the settlement of an account, from the date of ascertaining the balance; on money received to the use of another, and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment. Judgments or decrees draw interest at 5 per cent. Penalty for contracting for more than 7 per cent is the loss of the entire interest, and only the principal sum can be recovered. A written contract, wherever payable made, in this State between citizens of this State and of a foreign State (or secured by a mortgage on lands in this State) is controlled by the law of this State as to the rate of interest, and the penalty for usury. Usury must be specially pleaded. In all computations of time, and of interest and discounts, a month is considered to mean a calendar month, and a year twelve calendar months, and a day the thirtieth part of a month. A foreign corporation is subject to the same penalties for usury as a citizen of this State.

Judgments and Executions. A judgment is a lien on real estate situated in the county where the judgment is rendered, for seven years from its date. If an execution is not issued on a judgment within one year the judgment ceases to be a lien. A transcript of a judgment in another county may be filed and thereupon becomes a lien upon real estate of the defendant in the county where filed, and execution may issue thereunder. An execution becomes a lien on personal property from the time it is delivered to the officer to be executed. All goods and chattels, including money and stock in a corporation, may be levied on. Personal property may be sold under execution on ten days' notice. A forthcoming bond may be given by the defendant to the officer. A third party claiming the property levied on may have a trial as to the right of property in the county court. Judgments may be confessed by a debtor or his authorized attorney without process in term time or vacation.

Liens. A landlord has a lien for rent upon crops growing on the demised premises. Hotel, inn, and boarding-house keepers have a lien upon baggage and other valuables of guests. Stable-keepers have a lien upon horses, carriages, and harness for the keeping thereof. Garage keepers are entitled to liens on automobiles, parts and accessories, for keeping, repairing, materials furnished thereto, and the expenses bestowed thereon at the request of the owner, or the person having the possession thereof. Agisters and persons keeping, yarding, and feeding domestic animals have a lien therefor. All persons furnishing supplies, or doing work for any railroad organized under the laws of this State, necessary for the construction, maintenance, operation, or repair of the road, have a lien therefor on all the property of the company, which is good as against mortgages and other liens acquired after the commencement of the delivery of supplies, or the doing of the work. Attorneys have liens on all demands, claims, and causes of action of their clients, after the service of notice upon the adverse party. Contractors and sub-contractors, including architects, superintendents, timekeepers, etc., have liens on any real estate, interest therein, or improvements thereon, for all kinds of labor and services performed, and materials furnished for the erection of any building, or the improvement of any real estate, or thing connected therewith. A person furnishing material, apparatus, fixtures, machinery or labor to a contractor for a public improvement, has a lien upon the money, bonds or warrants due or to become due under such contract: Provided, the claimant serves upon the municipality a notice of his claim before payment be made to such contractor; but the lien attaches only to the portions of the money, bonds, or warrants against which no voucher or other evidence of indebtedness has been issued and delivered to the contractor.

Limitations. In personal actions as follows: Libel and slander, one year; actions for damages for injury to persons, two years (where death results, one year after death); for false imprisonment, malicious prosecution, for a statutory penalty, for abduction, seduction, or criminal conversation, two years; actions on unwritten contracts, express or implied, on awards of arbitration, to recover damages for injury to property real or personal, to recover possession of personal property, or damages for the detention of conversion thereof, and all civil actions not otherwise provided for, five years; actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing, ten years; but any payment or new promise to pay in writing renews the right of action on such instrument for ten years from the time of such payment or promise. A domestic judgment of a court of record, twenty years; of a foreign court of record, five years.

Limited Partnership. There are statutory provisions as to the formation of limited partnerships, but such partnerships are not common in Illinois.

Married Women. A married woman may sue, be sued, or defend, as if she were unmarried. When the husband deserts, the wife may prosecute or defend in his name. The husband has the same right upon the desertion of the wife. The husband is not liable for the wife's torts except in cases where he would be jointly responsible if the marriage did not exist. The husband or wife is not liable for the debts of the other incurred before marriage, or for the separate debts of each after marriage, except that the husband and wife are jointly and severally liable for the expenses of the family and the education of their children. The wife may contract as if unmarried, except that she can not carry on a partnership business without the consent of her husband, unless he has abandoned her, or is insane, or confined in the penitentiary. She may receive and use her own earnings free from the interference of the husband or his creditors. Neither the husband nor the wife can recover compensation for any labor performed or services rendered for the other. She may own in her own right real and personal property obtained by descent, gift, or purchase, and manage, sell, and convey it to the same extent

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

that the husband can property belonging to him; but no transfer of personal property between the husband and wife living together is good as against third persons, unless acknowledged and recorded as chattel mortgages are required to be. A married woman who without her fault lives apart from her husband may maintain an action for reasonable support and maintenance. The wife may insure her husband's life. She may become surety for the husband. She may execute a will, if over eighteen years of age, at which age she attains majority.

Mortgages. Real estate mortgages should be executed and acknowledged the same as deeds. The wife must join to bar dower, except in mortgages for purchase-money. Trust deeds are often preferred to mortgages because of the facility in the transfer of the security and, in case of non-resident creditors, in obtaining a release, the trustee generally being a resident. Real estate mortgages may be released upon the record or by release deed. Mortgages and trust deeds must be foreclosed by scire facias or by regular foreclosure suit in a court of chancery. In extreme cases, where the mortgaged property is clearly of less value than the debt secured and the mortgagor is insolvent, there may be a strict foreclosure which cuts off the right of redemption, in which case the mortgagee takes the property in discharge of the debt. In other cases, after decree of foreclosure the officer designated to execute the decree delivers a certificate of sale to the purchaser and files a copy thereof for record. The debtor may redeem within twelve months, or if no judgment creditor redeems, then within fifteen months; at the end of which time the purchaser is entitled to a deed. The holder in due course of a note secured by a mortgage or trust deed on real estate in Illinois stands in no better position, so far as the enforcement of his security is concerned, than the payee or original holder; but this doctrine does not apply to corporate bonds payable to bearer.

Negotiable Instruments. The "Uniform Negotiable Instruments Law" is in force in Illinois, with the following modifications: 1. All Promissory Notes, Bonds, Due Bills, and other instruments in writing, whereby one promises or agrees, to pay any sum of money or articles of personal property, or any sum of money in personal property, or acknowledges any sum of money or article of personal property to be due, are negotiable. Except as to Promissory Notes payable in money due diligence must be used by the holder against the maker, if he be a resident and solvent, by suit at first term of Court after maturity, in order to hold the endorser. 2. Accommodation paper may be issued after maturity, if such was the intention of the accommodating party. 3. The addition of words of assignment or guaranty to a blank indorsement does not affect the signature as an indorsement unless otherwise expressly stated. 4. The defenses of fraud and circumvention in the execution of negotiable paper, or that the consideration arose out of a gambling transaction prohibited by sections 130, 131, and 136 of our Criminal Code, may be asserted as against a holder in due course. 5. The fact that a depositor makes his note payable at a bank does not authorize the bank to pay it out of his funds on deposit. 6. An alteration of an instrument voids it only when it is material or fraudulent, and made by the holder. 7. A promise in writing to accept a bill made either before or after it is drawn is deemed an actual acceptance as to the person receiving the bill on the faith thereof. 8. Section 137 of the Uniform Negotiable Instruments Law, providing that the destruction by the drawee of a bill of exchange left with him for acceptance, or his refusal to return the same within twenty-four hours after delivery to him or within such further period as the holder might allow, should be deemed an acceptance of the bill, is omitted from the Illinois act.

Partnership. The Uniform Partnership Act and the Uniform Limited Partnership Act are in force in Illinois.

Probate Law. (See Administration of Estates.)

Recording Acts. In counties having a population of less than 60,000, the clerk of the circuit court is ex officio the recorder. In other counties a "recorder of deeds" is elected. As to what instruments must be recorded, see respective titles.

Replevin. The action lies for personal property wrongfully detained. The action may be brought in any county where the property is, or where any of the defendants reside or may be found. Before the execution of the writ, the plaintiff, or some one in his behalf, must give the officer a bond with sufficient security (a real estate owner of the county is generally required) in double the value of the property.

Sales. The Uniform Sales Act has been adopted in Illinois.

Sales in Bulk. Sales of the major part or all of a stock in trade, chattels or fixtures not in the ordinary course of business, are fraudulent and void as to creditors unless the buyer obtains from the seller an affidavit giving a list of his creditors with addresses and amounts due each, and the buyer, five days before payment, gives notice to each creditor personally or by mail of the contemplated purchase.

Taxes. All real and personal property in this State, including moneys, credits, bonds, stocks, investments, shares of stock in corporations (see Corporations), and of banks doing business in this State, is subject to taxation. Real and personal property is listed with the County Assessor and assessed between April 1st and June 1st as of April 1st. The taxes are payable on or before May 1st of the ensuing year; after which time penalties are added. There is an Inheritance Tax Law, the rates varying according to the relationship of the heir, devisee, or legatee, and the amount of the legacies, ranging from 2 per cent in the cases of widow and children, as to legacies exceeding $20,000 and not exceeding $50,000 to 30 per cent on amounts bequeathed to persons not related to the deceased exceeding $100.

Warehouse Receipts. The Uniform Warehouse Receipts Law is in force in Illinois.

Wills. Every male over twenty-one, and female over eighteen, is competent to make a will. It must be signed by the testator or by some person in his presence and by his direction, and attested in his presence at his request by at least two witnesses. The witnesses should be disinterested. A devise to a witness is void unless the will be otherwise duly attested by two witnesses exclusive of such person. Where the subscribing witnesses are dead, secondary evidence of the execution is admissible. The will is proved, after notice to heirs and legatees, in the county (or probate) court, and may be contested, in chancery, within one year after its probate. Wills or authenticated copies, affecting estate within this State, duly proved outside of this State, in accordance with the law of the State where executed, accompanied with a certificate of the proper officer of that fact, may be recorded here. Wills executed and published out of this State may be admitted to probate in any county in this State where the testator had lands or personal property upon like proof as if executed and published here, whether or not the will has been first probated in another state or county. The Uniform Foreign Probate Act is in force in Illinois. All originals wills, after being filed, must remain in the office of the county (or probate) court. Children may be disinherited.

SYNOPSIS OF

THE LAWS OF INDIANA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by Messrs. Pickens, Davidson, Gause and Pickens, Attorneys at Law, 1300 Fletcher Tr. Bldg., Indianapolis. (See Card in Attorneys' List.)

Acknowledgments. All conveyances of real estate, except leases for less than three years, must be in writing, and acknowledged and recorded at once, or they will not bind third parties. Within the State acknowledgments may be taken before a judge or clerk of the court of record, justice of the peace, auditor recorder, notary public, member of the general assembly, 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 diplomatic or consular officer 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 and mortgages of 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. The certifying officer should state the date when his commission expires.

Actions. The distinctions between law and equity are abolished. The statute provides but one form of action. Pleadings are governed by code. Non-resident plaintiffs must give bond to secure costs.

Administration of Estates. Except in Marion County, which has a separate probate court, the circuit court has exclusive probate jurisdiction. In cases of intestacy letters are granted in following order. 1. Widow or widower. 2. Next of kin. 3. Largest resident creditor. 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. Where an intestate, not being an inhabitant, shall die out of the State, leaving assets in 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. Letters cannot issue to a married woman without her husband's consent in writing. Such consent makes 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 against an estate for 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, 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. The claim must be filed within one year from the notice of the administrator's appointment, or claimant must pay 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.

Affidavits may be taken before any officer qualified to take acknowledgments (see above). Date of expiration of officer's commission must be certified by the officer himself.

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.

Arrest for Debt. Defendant in a civil action may be arrested and held to bail in the amount claimed, at any time before judgment, or 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 This trust is administered under the direction of the county court. Dividends are allowed on all claims allowed by the trustee or 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, and a bond to pay damages if the proceedings be 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 at any one time, are exempt so long as debtor remains in such employment. It is a misdemeanor to send claims out of the State to be collected by attachment, or garnishment, when creditor, debtor, and person owing for earnings intended to be reached are all within the jurisdiction of the court of this State. The collection of claims so sent may be enjoined.

Banks, Private. Act of 1907 (in effect Dec. 1, 1907), regulating private banking applies to any one who may use the word "bank" in his business. Capital must be at least $10,000, not more than one-third of which may be invested in the bank building. All real estate must be held in name of bank. Bank cannot invest in real estate except in realizing on doubtful claim. Statement must be filed with state auditor showing copy of articles of partnership acknowledged (one of the partners to be resident of the state); location, amount of capital, net worth of partners to be double capital paid in, names of officers. List of officers must be posted in bank. Two reports of resources and liabilities are called for each year by auditor and published in local newspaper. Examination of bank made at least annually by auditor. Special reports can be called for by State Bank Commissioner whenever necessary. Statement of property held in trust by bank must be filed in county recorder's office. Depositors have lien on assets. Jurisdiction over all persons interested is obtained by process served on officer in charge. Banks can not commence business until chartered by State Charter Board. Banks cannot establish branches without first having obtained a charter from the State Charter Board.

Banks, Savings. Governed by a general statute which regulates in minute detail the investments and conduct of business. Savings banks may purchase, hold, and convey real estate for the following purposes, and none other: For the location of banking house, real

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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. Regulated by a general banking law. The state department of banking appoints a 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 reports in detail the condition of the bank from time to time. The state banks must make not less than five reports each year, verified by the president, or other managing agent, which reports must exhibit the resources and liabilities at the close of business on any past day to be by the auditor specified. The report so required must be published in a newspaper 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. The auditor may require special reports from any bank, whenever in his judgment, it shall be necessary in order to a full knowledge of its condition. Any bank failing to make such report shall be subject to a penalty of $100 for each day that it delays to make and transmit the same. All banks are empowered to execute trusts and act as trustees.

On September 30, 1920 all duties, power and authority formerly vested in the auditor of State as to banks of all kinds buidling and loan associations, mortgage guarantee companies, rural loan and saving associations, will be lodged in a Banking commissioner appointed by the Governor and said Commissioner will be at the head of the Department of Banking a separate branch of the State Government. All laws relating to above named companies remain in full force and effect.

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 The Uniform Negotiable Instrument Law has been in force in Indiana since 1913. (See Negotiable Instruments.)

Blue Sky Law (Enacted 1925). The Act known as the Indiana Securities Law was approved February 27, 1925, and was effective April 25, 1925. Provides for a Securities Commission. The Secretary of State shall constitute the Securities Commission with plenary power to administer the Act.

"Security" shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, transferable certificate of interest or participation, certificate of interest in a profit-sharing agreement, certificate of interest in an oil, gas, or mining lease, collateral trust certificate, pre-organization certificate, pre-organization subscription, beneficial interest in a trust or pretended trust, any transferable share, investment contract, or beneficial interest in or title to property or profits.

"Person" shall include a natural person, a corporation created under the laws of this state or any other state, country, sovereignty, or subdivision thereof, a partnership, an association, a joint stock company, a trust, a syndicate, a firm, and any unincorporated organization.

"Sale" shall include every disposition or attempt to dispose of a security or interest in a security for value.

"Dealer" shall include every person other than an agent, who in this state engages either for all or part of his time directly or through an agent in the business of selling any securities. The word "dealer" shall not include a person having no place of business in this state, who sells or offers to sell securities exclusively to a promoter or dealer actually engaged in buying and selling securities.

"Issuer" shall mean and include every person who proposes to issue, has issued, or shall hereafter issue any securities. Any natural person who acts as a promoter for and on behalt of a corporation to be formed shall be deemed to be an issuer.

"Agent" shall include every natural person, other than a dealer, employed or appointed or authorized by a dealer or issuer to sell securities in any manner in this state.

This Act shall not apply to the following classes of securities:

(a) Any securities issued or guaranteed by the United States or any territory or insular possession thereof, or by the District of Columbia or by any state or political subdivision thereof, having the power of taxation or assessment.

(b) Any securities issued or guaranteed by any foreign government with which the United States is at the time of the sale or offer of sale thereof maintaining diplomatic relations.

(c) Any securities issued by a national bank or by any federal land bank or joint-stock land bank or national farm loan association under the provisions of the federal farm loan act of July 17, 1916, or by the war finance corporation or by any corporation created or acting as an instrumentality of the government of the United States.

(d) Any securities issued or guaranteed either as to principal, interest or dividend by a corporation owning or operating a railroad or any other public service utility: Provided, that such corporation is subject to regulation or supervision as to the issue of its own securities by a public commission.

(e) Any securities issued by a corporation organized under the laws of this state exclusively for educational, benevolent, fraternal, charitable, or reformatory purposes, and not for pecuniary profit.

(f) Securities appearing in any list of securities dealt in on the New York stock exchange, or on any other recognized and responsible stock exchange which has been previously investigated and approved by the commission: Provided, however, that the commission may at any time withdraw its approval of any such stock exchange or security listed on the New York stock exchange.

(g) Any securities issued by a state bank, trust company, or savings institution incorporated under the laws of Indiana, and subject to the supervision and control of the state government.

(h) Any securities issued by any corporation, organized under the laws of this state authorized to deal in securities and whose holding stock is owned solely and in the same proportion by the owners of the stock of any national bank, or any state bank or trust company incorporated under the laws of and subject to the examination, supervision and control of this state.

(i) Negotiable promissory notes or commercial paper.

(j) Capital stock issued by a corporation organized under the laws of this state where no expense in excess of one per cent of the proceeds from the sale of its capital stock to be presently issued is incurred and no compensation or remuneration is paid, or given in connection with the sale of such capital stock, and provided that no part of the issue to be disposed of is issued directly or indirectly, in payment for patents, services, good will, trade-marks, leases, copyrights, processes, formulae or other intangible assets.

(k) Any securities which, under the laws of this state, are a legal investment for savings banks or trust funds.

(l) Any securities secured by real estate or leasehold within the state of Indiana, which is purchased for investment or resale by any state bank, etc. subject to the supervision of the banking authorities of the United States or the State of Indiana.

The Act does not apply to the sale of any securities at any judicial, executor's, administrator's, guardian's, or conservator's sale, or at the distribution by a corporation of capital stock, to its stockholders as a stock dividend.

The transfer or exchange by one corporation to another of their own securities in connection with a consolidation or merger of such corporations.

No securities except those exempted shall be sold within this state unless and until such securities shall have been registered by notification or by qualification.

The following securities shall be entitled to registration by notification:

Securities issued by a corporation, partnership, association, etc., which has been in continuous operation not less than three years, and which has shown during a period of not less than two years, nor more than ten years, next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings.

Securities entitled to registration by notification shall be registered by the filing by any registered dealer interested in the sale thereof in the office of the Commission of a written statement containing the following:

Name of issuer.

Brief description of the securities including the amount of the issue.

Amount of securities to be offered in the state.

Brief statement of the facts which show that the securities fall within one of the notification classes.

The price at which the securities are to be offered for sale.

The filing of such statement in the office of the Commission and the payment of the fee shall constitute registration of such security, and such security when so registered may be sold in this state by any registered dealer.

Applicants for registration shall pay to the Commission a fee of one-twentieth of one per cent of the aggregate par value of the securities to be sold in this state, but in no case shall such fee be less than $5.00 nor more than $150.00.

All securities required by this Act to be registered before being sold in this state, and not entitled to registration by notification, shall be registered only by qualification, as follows:

Applications shall be in writing and sworn to upon prescribed forms. The applicant shall pay to the Commission a fee of one-twentieth of one per cent of the aggregate par value of the securities to be sold, but in no case shall such fee be less than $25.00 nor more than $200.00.

Upon application for registration by qualification, whether made by an issuer or registered dealer, where the issuer is not domiciled in this state, there shall be filed with such application the irrevocable written consent of the issuer that suits and actions growing out of the violation of any provision or provisions of this Act may be commenced against it in the proper court, said consent agreeing that such service of process shall be taken as valid and binding as if due service had been made.

The Commission may revoke the registration of any securities upon cause, and the Commission shall have access to and may compel the production of all the books and papers of such issuer.

No dealer or agent shall engage in the business of selling securities until he had been registered and shall also file with his application a bond in the sum of $5,000, said bond being executed by a surety company of a net worth of not less than one million dollars.

The fees shall be $25.00 in the case of dealers and $5.00 in the case of agents.

Registration may be refused such applicant or registrant upon cause.

Nothing in this Act shall be construed to relieve corporation from making reports now or hereafter required by law to be made to the Secretary of State or any other state officer, or paying the fees now or hereafter to be paid by corporations.

This Act shall not be construed to repeal any law now in force regulating the organization of corporations or the admission of any foreign corporations.

An appeal may be taken by any person interested from any final order of the Commission to the Marion Circuit Court by serving upon the Commission within twenty days from the entry of such order a written notice of such appeal, and executing a bond in the penal sum of $500.00.

The Act approved July 26, 1920, and amended March 9, 1921, entitled An Act to Prevent Fraud in the Sale and Disposition of Stocks, Bonds, and other Securities and real estate in certain cases in the State of Indiana," and all acts and parts of acts in conflict herewith are hereby repealed as of the date of the taking effect of this act.

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 acknowledgments of deed, 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. For certain restrictions on the lending of money on mortgage of household goods, see the statutes.

Conveyances. All conveyances, mortgages or leases for more than three years shall be recorded and take priority according to time of filing as against good faith purchaser, lessee or mortgagee. 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), 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.

Except bona-fide leases for a term not exceeding three years, conveyance of lands, or of any interest therein, must be by deed, subscribed, and acknowledged by the grantor or by his attorney in fact. 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 or release or quit-claim shall pass all the estate which the grantor could convey by a deed of bargain and sale. 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 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.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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. (See Acknowledgments, Married Women.)

When either the husband or wife is of unsound mind the party with the sound mind can either join in the guardian's deed or make his separate deed and the effect would be the same as a joint deed of husband and wife both of whom are of sound mind.

Corporations. Domestic Corporations. Corporations are created only under general statutes. This is done by means of articles of association, filed with the secretary of state, and the recorder or clerk of the county, as provided by statute. 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, 1883, stockholders are liable, in case of insolvency, for a sum at least equal to amount of stock held at time the debt was contracted. In most corporations, stockholders who have paid for their stock are not liable for debts of the company. However, there is liability in some cases for labor and services of employes. Shares of capital stock in a private corporation are subject to attachment. Annual reports must be filed in June with the Secretary of State. A new code regulating the incorporation of companies for profit has been enacted (1921) which supplants many existing statutes creating such corporations.

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, or appointment, under which they act. They shall also file a duly authenticated order, resolution or other sufficient authority of the board of directors authorizing citizens or residents of this State having a demand against such corporation arising out of any transaction in this State with such agents to maintain a action in respect to the same in any court of this State of competent jurisdiction, and authorizing service of process on such agent, and that such service shall authorize judgment and all other proceedings against such corporations. By act of 1913, foreign corporations must file with auditor of State certified copy of vote of directors consenting to accept service of summons on auditor of State as summons on corporation. If foreign corporation has no agent within State, summons may be served on Auditor of State, who shall notify corporation. Contracts made by such agents shall not be enforced in any court of this State until there has been a compliance with the above provisions. Failure of a foreign corporation to comply with these provisions will not bar—but will abate such 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. By act of 1907 foreign corporations desiring admission to state must make verified statement to Secretary of State showing: articles of incorporation, business intended to pursue, capital stock, proportion of its business carried on in this State, amount paid in on capital stock, and answers to other interrogatories propounded by the Secretary of State, and shall pay a fee of $25 on first $10,000 of assets used in Indiana, $10 for each additional $10,000. Annual report must be filed in January and fee of $1 paid. Foreign corporations may not hold real estate except such as may be necessary for proper carrying on of its legitimate business.

Courts and Jurisdiction. Circuit Courts in all counties, original general jurisdiction in all civil causes, original general jurisdiction in all criminal causes, except in the counties of Lake and Marion in which there are criminal courts, probate jurisdiction, except in Marion County which has a probate court, also appellate jurisdiction in appeals from Justices of Peace, Mayors of cities and Board of County Commissioners. Superior Courts are established in many counties with original concurrent jurisdiction with the circuit courts in all causes except slander and libel, criminal causes, probate matters and concurrent appellate jurisdiction with circuit courts. Justices of the Peace in all townships, jurisdiction in civil actions for $200.00 or less, in the township, also jurisdiction in petty criminal causes. Party may confess judgment in Justice's court for $300.00. In actions on written obligations for money of more than one party Justice has jurisdiction in township where either party resides and may issue process to any county in the state for other parties. Supreme Court is highest appellate court and has no original jurisdiction except in a few specified cases. Appellate Court has final appellate jurisdiction in many cases, no original jurisdiction. In some specified classes of cases defeated party may have cause transferred to Supreme Court. Both Supreme and Appellate Courts sit only in Indianapolis

Days of Grace are no longer recognized.

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 party 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 intervening Sundays. The deponent shall be first sworn according to law. 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 shall be subscribed by deponent. 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 the adverse party attended. 4. The time and place of taking, and the officer shall sign and attest the certificate, and seal the same, if he have a seal of office. If he have no seal, his certificate shall be authenticated by the certificate and seal of the clerk or prothonotary of any court of record of the county in which 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 court 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 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 intestate shall descend to his or her children equally; 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. The estate of a person dying intestate without kindred capable of inheriting will escheat to the State for the support of the common schools.

Dower. (See Married Women.)

Executions may issue at any time within ten years after judgment 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 judgment 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; 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. Property up to $600 is exempt in suits on contract 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 property made or suffered with intent to hinder, or defraud are void as to the persons 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: 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. 7. Upon any representation made concerning the character, conduct, credit, ability, trade or dealings of any other person.

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 that official 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. Upon service of execution on any individual, said execution shall become a lien. Wages of non-residents, to the amount of $25, and of resident householders to the extent of one month's wages, are exempt from execution so long as the defendant remains in the employ of the garnishee. Indiana claims can not legally be sent or taken out of the State for prosecution, and suits instituted elsewhere in violation of this prohibition may be enjoined and the offender be criminally prosecuted.

Holidays. (See Legal Holidays.)

Husband and Wife. (See Married Women.)

Inheritance Tax. (See Taxes.)

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. When a greater rate is contracted for, the contract is void as to all interest in excess of 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 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.

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

or FRASER
er.stlouisfed.org
serve Bank of St. Louis

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. A certified copy of any judgment rendered by the District Court of the United States for district of Indiana may be filed with the county clerk.

Legal Holidays as to commercial paper are as follows: The first day of the week, commonly called Sunday; the 1st day of January; the 4th day of July; the 25th day of December; any day appointed by the president or governor for public fasting or thanksgiving; 12th day of February; 22d day of February; 30th day of May; first Monday of September; 12th day of October; and any election day; when any holiday (other than Sunday) comes on Sunday the Monday next succeeding shall be the legal 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.

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 employes 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 blacksmiths; 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; special lien for storage or repair of motor vehicles; also to forwarding and commission merchants on goods which may have remained in store for one year or more; also to all persons, firms and corporations engaged in the business of storing, warehousing and forwarding, goods remaining in possession of such person, firm or corporation for more than six months may be sold at public auction to pay amount of lien; also to landlords upon crops. Persons storing, furnishing supplies or repairing a motor vehicle or garage owners have lien on motor vehicle which can be foreclosed within one year from failure of owner to pay charges. 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 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 suits does not operate as a construtcive 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, and on public improvement assessments, 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 limitations does not run against the State.

Married Women control their real and personal property. The husband is liable for the wife's debts contracted before marriage to the extent of the personal property he may receive from her, and no further, and her lands are liable for such indebtedness. A married woman may devise her separate estate; may sell and transfer her separate personal property; carry on any business, labor, or service, and receive the earnings accruing therefrom; enter into any contract in regard to her separate personal estate business, labor, or service, and her separate estate, real and personal, be liable therefor, the same as a femme sole; and her husband is not liable for such debts, nor for indebtedness created by the wife for improvement of her separate real estate. She can make leases of real estate for terms of three years or less, and execute mortgages to secure purchase money, without husband joining. She is bound by covenants of title in conveyances of her separate real estate. Her deed conveying her real estate, her husband not joining, is absolutely void. She may sue as a femme sole for any damage to her person or character. She is bound in like manner as principal on her official bond. Disability as to suretyship has been abolished, therefore, in making loans to married women it is not necessary for her to make an affidavit that the money used is for her own benefit. She is entitled to hold as exempt from execution in any suit on contract property to the amount of $600. A widow takes one-third of her deceased husband's real estate in fee, and free from all demands of creditors, where the estate does not exceed $10,000; one-fourth, if under $20,000, and one-fifth, if above that amount. She also takes a child's interest in the 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 personalty after payment of debts, and in all cases takes $500 without accounting, and may occupy the dwelling of 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 cannot 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.)

Negotiable Instruments are defined by Chapter 63 of the Acts of 1913 which is the Uniform Negotiable Instrument Act. Section 1 provides 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 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 to bearer.
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 is 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 of the obligor, or gives the holder an election to require something to be done in lieu of the payment of money.

To charge indorser notice of non-payment must be given to him at once, unless waived by him.

Every negotiable instrument is payable at the time fixed therein without grace. Where day of maturity falls on Sunday or a holiday, instrument is payable on next succeeding business day. Instruments payable on Saturdays are to be presented for payment on next succeeding business day, except that demand instruments may be presented for payment before noon Saturday when that entire day is not a holiday. In any case not provided for in the act the law merchant governs, and all laws in conflict are repealed.

Act does not apply to negotiable instruments made and delivered before April, 1913.

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. The statutory damages on such protest are 5 per cent on the principal of a bill of exchange, if drawn or negotiated within this State, upon any person, at any place out of this State, but within the United States, and 10 per cent if upon any person, at any place without the United States.

Replevin. When any personal property is wrongfully taken or unlawfully detained, or, if taken on execution or attachment, is claimed by a third party, the owner or claimant may bring an action for possession thereof. He may claim immediate delivery upon affidavit therefor, whereupon the sheriff takes possession of the property, and if 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 worth $200 or less. Procedure is same before justice of the peace, except that the plaintiff must file bond in all such cases. Replevin may also be had without bond, by allowing defendant to retain possession of property pending suit.

Suits. (See Actions.)

Taxes. State, county, township, municipal, school, and road taxes attach as a lien on real estate on March 1st of each year, and penalties attach on first Monday in May 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 provided that all war taxes charged shall be included in the first installment. 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. An inheritance tax, graduated in amount according to the amount involved, and the relation of the beneficiaries to the decedent, is levied upon all intangible or tangible proper of resident decedent, and upon tangible proper of non-resident decedent. Tax applies as well to gifts made in anticipation of death, to take effect at that time. Inheritance taxes do not apply to the transfer of the estate of any decedent leaving an estate of less than $25,000, dying or who has died while in the military or naval forces of the United States during the World War or within one year after the termination of the war. (Revision of the tax laws made by 1919 Legislature and for further information reference should be made to the Acts 1919.)

Wills. No will except a nuncupative will shall affect any estate unless it be in writing, signed by the testator or by someone in his presence, with his consent, and subscribed in his presence, by two or more competent witnesses in the presence of each other. A will made before marriage becomes void on marriage of testator. No nuncupative will shall be valid when more than the value of $100.00 is bequeathed, nor unless it is made in the last sickness of the testator, and the subject thereof 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, in effect, request some of those present to bear witness thereto; and no such nuncupative will shall be proved after six months from the death of the testator, nor until his widow and heirs shall have reasonable notice of the time and place of proving the same. Any soldier or sailor in actual service may dispose of his personal estate, in his actual possession, and his wages, by a nuncupative will. Any person may contest the validity of any will or resist the probate thereof at any time within one year after the will has been offered for probate. Upon the death of any testator any person interested in any part of the estate specified in the will may have the will probated. A will in writing shall be proven by one or more of the subscribing witnesses, or, if they be dead, out of the state, or have become incompetent from any cause since attesting the will, then by proof of the handwriting of the testator or of the subscribing witnesses thereto.

SYNOPSIS OF

THE LAWS OF IOWA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by B. J. Cavanagh, Attorney at Law, Suite, 1310 Equitable Bldg., 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. All instruments affecting real estate, including mortgages, deeds of trust, powers of attorney relating theretof, and leases for more than one year, must be acknowledged or the execution thereof proved and the instruments must be recorded in the proper office, in order to affect third parties. The same is also true as to bills of sale of personal property. Conditional sales contracts or leases must be signed by both vendor and vendee, or lessor and lessee and acknowledged by one of them, and must be filed the same as chattel mortgages (see Chattel Mortgages). Articles of incorporation must also be acknowledged and recorded. Forms of acknowledgments are prescribed by statute.

Actions. The common law forms of pleading are not used, although the common law forms the basis of procedure. Pleading, practice, and procedure are statutory, and accord, in the main, with what is known as the reformed, or code procedure.

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.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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.

Affidavits for proving accounts and form: State of..... County of.....ss, I.....being first duly sworn, on oath depose and say that I am (a member of the firm of.....and that said firm is) the owner of the account hereto attached, marked exhibit A, and made a part hereof, that the same is correct in all particulars and that the articles named therein were sold and delivered to said.....at the prices and times therein named and agreed upon, and that said articles were reasonably of the value charged, and that the said account is due and unpaid. That there is no legal set off or credit to the same or any part thereof *except as herein* stated. Subscribed and sworn to before me, by the said.....this.... day, etc.

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.

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. (See Supplementary Proceedings.)

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.

Attachments. An attachment, auxiliary to the main case, may be sued out upon any one of twelve (12) statutory grounds for a debt, which is past due; or upon any one of four (4) statutory grounds for a debt on contract, not yet due. A bond must be filed for three times the amount claimed, if the action is founded upon contract, otherwise, in a sum to be fixed by the court, if the action is not founded upon contract. Garnishments may be effected under the writ of attachment. Special attachments are permitted, to attach specific personal property, in a few prescribed cases.

Banks. The banks organized under the laws of Iowa are respectively designated as savings banks and state banks.

Savings banks must have a minimum capital of from $10,000 to $50,000, according to the population of the city or town in which each is located. Each share must be of the par value of $100. The statutory provisions must be consulted concerning the manner of organization, the issuance of and payment for capital stock, the board of directors, quorum, voting by proxy, limitation of deposits, and the investment thereof, the loaning of funds, the cash reserve required, and the dissolution of such banks.

State banks must have a minimum capital of from $25,000 to $50,000, according to the population of the city or town in which each is located. Each share must be of the par value of $100. The statutory provisions must be consulted for the particulars above referred to on the subject of savings banks.

Banks and loan and trust companies may obtain power to act as executor, administrator, guardian, receiver, assignee, trustee, or in other fiduciary capacity. National Banks may exercise the same powers when authorized by Act of Congress. Any Iowa State or Savings Bank or Trust Company may become a member of the Federal Reserve bank system.

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. (For Grace, See Days of Grace.) 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.

Bills of Lading. The uniform Bill of Lading law has been adopted in Iowa.

Blue Sky Law. This law obtains with respect to offering for sale certain stocks or securities, and all corporations, dealers, brokers and other parties affected must have permit from Secretary of State, from whom copy of the law, rules, requirements, applications and report blanks may be obtained upon application.

Chattel Mortgages. No sale or mortgage of personal property, where the vendor or mortgagor retains actual possession, is valid against existing creditors or subsequent purchasers without notice, unless a written instrument conveying same, be executed acknowledged like conveyances of real estate, and such instruments, or a duplicate thereof duly recorded, or filed and deposited with the recorder of the county where the property shall then be situated or if the mortgagor be a resident of the state, then of the county where the holder of the property resides. No encumbrance of personal property which may be exempt from execution by the head of a family if a resident of the State shall be of any validity unless the same be by written instrument and unless the husband and wife concur in and sign the same joint instrument.

Collateral Securities. There are special statutory provisions concerning the pledging of corporate stock, as security; and also upon the subject of sales of collaterals by action in court and judicial sale. Otherwise the subject is governed by the common law.

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 and vendee, or by the lessor and lessee, acknowledged by the vendor or vendee, or by the lessor or lessee, and recorded or filed and deposited the same as chattel mortages.

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, except where the corporation has not adopted a seal. Such conveyances must be signed in the name of the corporation by the officers authorized so to do, by the Articles of Incorporation, or By-Laws, or by resolution duly entered of record in the minutes of the corporation, and duly acknowledged by such officers, as the act of the corporation.

Corporations. Private corporations, sole or aggregate, may be formed for any lawful purpose. But there are special statutory provisions which must be complied with for the organization and government of insurance, banking, loan and trust, building and loan, and railway corporations. In all cases, the articles of incorporation must be acknowledged and recorded, in the manner provided by law, and approved by the secretary of state. With a few exceptions, an incorporation fee of $25, plus $10 for each thousand dollars of capital in excess of $10,000 must be paid, upon the organization or renewal of a private corporation. The general term of the life of a private corporation is twenty years, renewable for a like term. Railroads, savings banks, and a few others may last fifty years, also renewable.

Foreign corporations must obtain a permit to do business in the state. The statute provides in detail what the application shall contain, and must pay to the Secretary of the State a fee of $25 upon $10,000 or less of money and property of the company actually within the State, and $1.00 for each $1,000 of such money or property within the State in excess of $10,000. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state, unless prior to the making of such contract it shall have procured such permit. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee of such corporation or under either of them.

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 4,000 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 grant divorces, alimony, and separate maintenance, and it has no probate jurisdiction. Transcripts from superior and justice's 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.

Municipal Court may be established by the vote of people in cities of 5,000 inhabitants. It has jurisdiction to try all violations of city ordinances, and the same criminal jurisdiction as Justice of the Peace court. It has concurrent jurisdiction with the District court in all civil matters involving $1,000 or less, but has no jurisdiction to grant divorces, alimony or separate maintenance, and has no probate jurisdiction. Transcripts must be filed in Dist. Court to create a lien, and appeals are taken direct to the Supreme Court.

Days of Grace. Every negotiable instrument is payable at the time fixed therein without grace.

Depositions may be taken within the State, on notice, and within or without the State, on commission, issued after notice by the clerk of the proper court. When to be taken on commission, defendant may elect, in writing, duly served, to cross examine orally; thereupon plaintiff may also elect in writing to examine orally. Exceptions must be filed within three (3) days, after the filing of the deposition, but objections may nevertheless be made on the trial for competency, materiality, and relevancy.

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 parents. If the intestate leave no issue the whole of the estate to the extent of $7,500 after payment of debts and administration expense, and one-half of the estate in excess of said $7,500 goes to the surviving spouse and the other half to the parents. 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.

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. A spouse, heir or devisee feloniously taking or procuring the taking of the life of the other spouse, or decedent, cannot have dower or inherit power or take under the will of the decedent. (See Limitations.)

Employers Liability. Employers liability and workmen's compensation is governed by statute.

Executions may be stayed, according to their amount, for ninety days or six months, with a few specified exceptions, and the issuance of execution may be prevented by filing an appeal bond. Otherwise execution may issue immediately after rendition of judgment. The judgment is a lien on realty within the county where rendered, or by transcript, it may be made a lien in any other county. Executions become liens on personal property only from the time of the levy and seizure. Real estate is sold on execution subject to redemption within one year, except in appealed cases, or where the interest is a leasehold of two years or less. Creditors may redeem from the sale after six months and before nine months from date of sale. Personal property is sold without redemption.

Exemptions. The head of a family is entitled to a homestead of forty acres or less of farm land, or half an acre or less in city or town. Pension money, its proceeds, wages of the head of a family for 90 days past, and numerous items of personal property are exempt by statute. There are statutory provisions concerning the creation of liens on exempt real or personal property, and the assignment of exempt wages. As to alimony there is no exemption unless the party in whose favor rendered remarries.

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.

Garnishments. (See Attachments.)

Husband and Wife. (See Married Women.)

Holidays. The first day of the week. January 1, February 12, February 22, May 30, July 4, the first Monday in September, the eleventh day of November, December 25, the day of general election and any day appointed or recommended by the governor of this State or the President of the United States as a day of fasting or thanksgiving are holidays, for all purposes relating to the presentation for payment or acceptance, and for the protesting and giving notice of the dishonor of bills of exchange, drafts, bank checks, orders and promissory notes.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

Interest. By written contract, maximum 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.

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, according to their subject matter, have various periods of limitation, fixed by statute, extending from three months to ten years after the cause of action accrued. Actions upon judgments rendered in courts of record have a limitation of twenty years. Dower rights and mortgages existing or created prior to January 1, 1885, are barred, unless now properly preserved in the recorder's office. Imperfect deeds by executors, administrators, trustees, or guardians made prior to January 1, 1885, are confirmed in favor of grantees in possession.

Married Women may own in their own right, real and personal property, and may manage, sell, convey, and devise the same by will. 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 liable for the separate debts of the other. Contracts may be made by a wife, liabilities incurred, and enforced by or against her, as if unmarried. Both husband and wife are liable for the reasonable and necessary expenses of the family, and the education of the children.

Mortgages must be subscribed and acknowledged by the parties creating the lien and recorded same as deeds. The wife should join in the instrument, except mortgages for purchase money, and mortgages upon non exept 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.) (See Limitations.)

Non-residents. Action may be brought against non-residents to enforce liens on any property within the state; to enforce any debt against a non-resident where action is aided by attachment on property found within the State. Personal judgment cannot in any case be rendered against defendants, not appearing, unless personal service is had on such defendants within the State. Non-residents may not sell at auction unless reciprocal legislation exists in the state of their residence.

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, only within the county in which commissioned.

Partnerships, Limited and Special. Limited and special partnerships are permitted, but not favored. The statutes on this subject must be strictly compiled 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.

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 employes for labor, not exceeding $100.

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 time after six months and within nine 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's 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 herein above 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.

Sales. This State has a uniform sales law.

Sales of Goods in Bulk. The sale, transfer or assignment in bulk of any part of the whole or a stock of merchandise and fixtures pertaining thereto otherwise than in the ordinary course of trade and in the regular prosecution of business, is void as against the creditors of seller: 1. unless at least seven days before the sale a detailed inventory is made, and 2. unless the purchaser demands and receives from the seller a written list of names and addresses of the creditors of the seller, with the full amount of indebtedness due or owing to each and certified by the seller under oath to be a full, accurate and complete list of his creditors and of his indebtedness, and 3. unless the purchaser shall at least seven days before taking possession or paying the purchase price, notify personally or by registered mail every creditor whose name and address are stated in said list or to which he has knowledge, of the proposed sale and of the price, terms and conditions thereof.

The bulk sales law does not apply to sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial sale. A purchaser not complying with these provisions becomes a receiver and accountable to the creditors for all merchandise and fixtures coming into his possession by virtue of the purchase.

Security for Costs. Non-resident plaintiffs may, on motion of defendant, be required to file a bond with sureties to be approved for security of costs either in Justice Court, Municipal Court, or District Court.

Statute of Frauds. No evidence except in writing and signed by the party to be charged or by his authorized agent, is competent relative to the following contracts: 1. In relation to sale of personal property, when no part of the property is delivered and no part of the price is paid. 2. In consideration of marriage. 3. Wherein one promises to answer for the debt, default or miscarriage of another, including promises by executors to pay the debt of decedent from their own estate. 4. For the creation or transfer of any interest in lands, except leases for a term not exceeding one year. 5. Those not to be performed within one year from the making thereof.

Stocks and Bonds. The sale of stocks and bonds is governed by what is termed a "Blue Sky Law."

Supplementary Proceedings. When an execution has been returned unsatisfied, plaintiff may have an order for the appearance and examination of the judgment debtor; or such order may be obtained after execution has issued upon proof by plaintiff's affidavit or other proof that debtor has property which he unjustly refuses to apply to the satisfaction of the judgment. If any property be found by such examination it may be levied upon; if in the hands of others the court may require its delivery to satisfy the judgment, and appoint a receiver of debtors property, forbid the sale thereof and order Equitable interests in realty to be sold.

Taxes. Real estate is assessed every odd year; personal property is assessed every year. All property is assessed at its actual value, and taxed at twenty-five (25) per cent of the assessed value. All road taxes and one-half of the other taxes levied are payable without interest or penalty before April 1st; the balance is payable before October 1st. Delinquent taxes bear interest at the rate of 1 per cent per month. Taxes upon realty are liens thereon; taxes upon personalty are liens upon the owner's realty, except the homestead, and may be continued as such liens, if the statute is complied with, from year to year. Taxes on personalty are liens on the personal property of non-residents, stocks of goods sold in bulk, and buildings or additions made after the assessment for taxation in the odd years. Personal property may be levied on and sold for taxes by distress and sale. Real estate is sold for uupaid taxes, after notice by publication, on the first Monday in December of each year, subject to redemption in three years from the date of sale.

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.

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 probation was made or of the probate judge, under seal, if they have one. All wills must be probated before they can be effectual.

SYNOPSIS OF

THE LAWS OF KANSAS

RELATING TO

BANKING AND COMMERCIAL USAGES

Acknowledgments. (See Deeds.)

Actions. Civil actions are conducted as required by a code of procedure. Security for costs must be given or resident plaintiffs may deposit $15 in lieu of bonds for cost. Non-resident plaintiffs may be required to give bond for costs.

Administration of Estates. Probate courts in each county have jurisdiction of estates. 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 first letters of administration. 6. Demands not exhibited within one year are barred, except as to infants, persons of unsound mind or persons imprisoned or absent from the United States, who shall have one year after the removal of their disabilities. 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 an authenticated 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.)

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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.

Assignments and Insolvency. Assignments must be for the benefit of all creditors and only discharge the debtor to the amount of payments made.

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. 6. 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. A bond in double the amount of plaintiff's claim is required except where by the attachment affidavit defendant is shown to be a non-resident of the State.

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 the county or adjoining counties to that in which the bank is located. 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 one third of their capital and surplus. Shareholders are additionally liable for a sum equal to the par value of stock owned and no more.

Deposit Guaranty Fund. Any bank having an unimpaired surplus equal to 10 per cent of its capital, may participate in the guaranty fund act. Such bank must deposit with the state treasurer money or bonds of the United States, State of Kansas, or of any township, school district, board of education or city within the State, to the amount of $500 for each $100,000 of its average deposits eligible to guaranty (less its capital and surplus). It shall also pay in cash an amount equal to one-twentieth of one per cent of its average deposits eligible to guaranty (less its capital and surplus).

In January of each year the commissioner shall make assessments of one-twentieth of one per cent of the average guaranteed deposits of each bank until the cash fund accumulated amounts to $500,000. The commissioner may make additional assessments of the same size not more than five in any one year. If a bank fails, the bank commissioner takes charge and winds up its affairs. He issues to each depositor a certificate bearing 6 per cent interest. Any balance due after assets are exhausted is payable out of the guaranty fund. Deposits otherwise secured do not participate, nor a bank's obligation as indorser upon bills re-discounted, not bills payable, nor money borrowed from its correspondents or others.

Banks are prohibited from advertising that deposits are guaranteed by the State but are permitted to advertise that deposits are guaranteed by the Bank Depositors' Guaranty Fund.

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

Bills of Lading. These are governed by the common law.

Bulk Sale. "The sale or disposal of any part or the whole of a stock of merchandise or the fixtures pertaining thereto, otherwise than in the ordinary course of his trade or business, shall be void as against the creditors of the seller, unless the purchaser receives from the seller a list of the names and addresses of the creditors of the seller certified by the seller under oath to be a complete and accurate list of his creditors and unless the purchaser shall, at least seven days before taking possession of the property, or before paying therefor, notify in person or by registered mail, every creditor whose name and address is stated in said list, or of whom he has knowledge, of the proposed sale."

In lieu of notice may give bond twice amount debts shown by sellers affidavit signed by two resident sureties, who justly for property in excess of the obligation of the bond the bond to be approved by and filed with the clerk of the district court of the county where the property sold is located.

Chattel Mortgages. A mortgage of personal property, where the property is not immediately delivered to the mortgagee who retains actual and continuous possession thereof, is void as against creditors of the mortgagor and as against subsequent purchasers and mortgages in good faith, unless the mortgage, or a copy thereof is filed in the office of the register of deeds in the county where the property is situated, or if the mortgagor is a resident of the state, then of the county of which he is at the time a resident. A mortgage so filed is invalid after two years unless within thirty days next preceding the expiration of such two years and each two years thereafter the mortgagee, his agent or attorney, makes an affidavit exhibiting the interest of the mortgagee in the property and showing the balance unpaid on the debt, and files the same in the same manner as the mortgage. In case of default the mortgagee may sell in the manner provided in the chattel mortgage.

A mortgage of exempt personal property is invalid unless executed jointly by husband and wife where that relation exists unless it be given for the purchase price of the mortgaged chattel.

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 corporation) is abolished, and in suits upon written contracts, as to the performance of conditions precedent, it is sufficient after setting out the contract to allege generally that plaintiff has fully performed the contract.

Conveyances. (See Deeds.)

Corporations. Corporations are formed under a general statute. Prospective corporations must apply to the charter board for a charter. A $25 application fee must accompany an application. Charter fee is one-tenth of one percent of its authorized capital stock upon the first $100,000; one-twentieth of one per cent on all in excess of $100,000. Forms for applications and charters furnished by the Secretary of State. 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. Duration of charter is fifty years, or less, as may be specified in the charter. No corporation (except railroad, banking, and building and loan), 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, or property equivalent thereto, but a corporation de facto exists if the 20 per cent has been paid even though the affidavit has not been filed. The name adopted must indicate the nature of the business. The corporate name must begin with the word "the" and end with the word "corporation," "company," "association," or "society," but this does not apply to banks, benevolent or religious societies. There must be at least five directors, three of whom must be residents of the State. The annual statement shall be made by each corporation for profit or on before March 31st of each year, showing a complete detailed statement of the condition of such corporation, on the 31st day of December next preceding. Failure to file this report within ninety days from time fixed works a forfeiture of the charter, and a penalty of $5 for each day the report is delayed. The capital stock can be increased to an amount not exceeding three times the original amount fixed in the charter and to any further amount of bona fide paid up capital. 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.

Costs. (See Actions). Corporations (except banks, insurance, building and loan companies and those not organized for profit) must pay an annual franchise tax on paid-up capital as follows: Not over $10,000, $10; over $10,000 and not over $25,000, $25; over $25,000 and not over $50,000, $50; over $50,000 and not over $100,000, $100; over $100,000 and not over $250,000, $125; over $250,000 and not over $500,000, $250; over $500,000 and not over $1,000,000, $500; over $1,000,000 and not over $2,000,000, $1,000; over $2,000,000 and not over $3,000,000, $1,500; over $3,000,000 and not over $5,000,000, $2,000; over $5,000,000, $2,500.

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 each month 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 not valued in excess, $300. The supreme court is the court of last resort.

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. As a rule the form used in other States is sufficient. As between the parties conveyances are valid without being recorded. Deeds may be valid as against attaching creditors 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. 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. 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. Courts are also authorized to appoint commissioners to take depositions. The depositions may be taken before any person authorized to take acknowledgments. 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. 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. 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 officer not possessing a seal, a certificate must be annexed, under the seal 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 certifictae. This should be attached to the certificate of the officer (not possessing a seal) who took the depositions.

or FRASER
er.stlouisfed.org
serve Bank of St. Louis

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 before such conveyance resided in the State. Remaining real estate goes to the surviving children, and living issue of prior deceased children, children taking per stirpes, in equal shares, or, if none, the whole estate goes to the widow. For want of wife or child or living issue of deceased 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 except exempt household furniture is sole property of surviving spouse. Property descending by law or will is subject to an inheritance tax, varying in percentage according to relationship and amount. (See Exemptions.)

Dower. Dower is abolished by law. (See Descent and Distribution.)

Evidence. (See Testimony.)

Executions may be ordered as soon as judgment is obtained if stay has not been granted or supersedeas given. Executions running to the sheriff of the county where the levy is to be made, may be levied on property in any county of the State and issue only out of court where judgment obtained except where abstract or transcript of justice judgment filed in district court of same county as that of the justice court, execution will issue on said judgment only out of said district court. There is no stay of execution in the district court except by supersedeas bond which may be given on appeal. 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. Real estate is only subject to execution issued out of district court of county wherein judgment rendered or abstract or transcript from justice of the peace filed. Executions are liens on personal property only from time of levy. Real estate sold on execution or order of sale, giving the debtor eighteen months in which to redeem. The debtor is entitled to possession of the property and rents and profits, during the period provided for redemption, except in case of waste. Receiver may be appointed to present waste and may use so much of rents and profits as are necessary to repair waste and pay costs of receivership. Surplus if any to be paid to judgment. debtor free from the lien of any judgment.

Exemptions. Homestead of 160 acres of farming land, or of one acre within an incorporated town or city, with buildings thereon, appurtenant to the use of the property as a homestead, unlimited in value. All household goods and wearing apparel; 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 on hand, etc., necessary 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 necessary for carrying on such trade. 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, but 10 per cent of such earnings may be required to be paid in and applied on the judgment.

Foreign Corporations. A foreign corporation doing business in this State must file a certified copy of its charter or articles of incorporation with the secretary of state and pay to the state treasurer the same fees upon the amount of capital invested or used in this state 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 on or before March 31st, giving condition on the 31st of December preceding. 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. A penalty is imposed of $5 for each day this report is delayed. Foreign corporations must pay an annual franchise tax on that portion of their capital represented by its property and business in Kansas on the same basis as domestic corporations. Failure of foreign corporations who transact business in Kansas, other than interstate commerce to comply with this law renders them subject to ouster and receivership proceedings on the part of the State but does not now affect the right of such foreign corporation to sue in the courts of this State.

Fraud. (See Attachments, Arrest, and Assignments.)

Garnishment in District Courts. 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 defendants, 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. In justice courts the affidavit differs from that acquired in district court actions only in that affiant states that plaintiff is in danger of losing his claim, in lieu of the allegations that the defendant has not property subject to execution sufficient to satisfy the debt. In the district courts bond in double amount claimed is required on garnishments before judgment, except where defendant is a non-resident. No bond required in justice courts.

Guaranty Companies. (See Trust Companies.)

Holidays. The following are legal holidays: January 1st, known as New Years Day. February 12th, Lincoln's Birthday. February 22nd, Washington's Birthday. May 30th, Memorial Day. July 4th, Independence Day. First Monday in September, Labor Day. October 12th, Columbus Day (but does not affect commercial paper). December 25th, Christmas Day. If any of these days fall on Sunday the next secular or business day is a legal holiday. Legal or business proceedings had on a holiday, excepts Sundays, are valid.

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.)

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 except from date of default. A purchaser of a negotiable note in due course 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 appearing of record in the district court may be filed in the office or the clerk of the district court of any other county and the judgment will then be a lien on real estate in that county. Abstracts or transcripts of justice court judgments may be filed in the district court or the same county, are liens on real estate in such county from the date of filing, after which executions issue only out of said district court on such judgments.

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, both original contractors, and sub-contractors, and laborers of sub-contractors are entitled to obtain liens upon real estate for labor performed or material furnished in the erection or repair of any building. Sworn statements itemized as fully as practicable as to the amount of the claim, for what and when it was rendered and by whom, giving names of contractor and owner and description of property and date of last material furnished, must be filed in the office of the clerk of the court. Original contractor's lien claim must be filed within 4 months from date of last materials, or labor furnished and others entitled to lien within sixty days after last materials or labor furnished. Lien claimants other than original contractors, must give immediate notice of filing of lien claim to owner or person in possession of the premises, where that may be done, otherwise must post notice on the premises. Supreme court has rendered notice almost unnecessary. Action to foreclose lien must be begun within one year after filing claim. Livery-stable keepers, forwarding merchants and common carriers have liens. (See Judgments.) Attorneys have lien on papers and funds in hand for general balance of compensation and have lien on moneys in hands clients adversary due client in any matter, action or proceeding, in which the attorney was employed for services therein from the time of service on the adverse party. in the manner of a summons, of written notice of the lien.

Blacksmiths, horseshoers, wagon makers and garage proprietors given lien for material and labor in their work perfected by filing statement of lien within sixty days after the services in the office of the register of deeds of the county where performed—foreclosed in same manner as chattel mortgage.

Liens similar to ordinary mechanics lien are given by statute for materials and labor furnished on oil leases in their development, and are foreclosed in like manner.

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 guardians, within five years after the deed is recorded. Other actions for recovery of real property, within fifteen years. 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, one year. Action for any other relief not before provided for, five years. In any case founded on contract, part payment, or an express written acknowledgement or promise, renews the contract. The statute runs from the date of such renewal. Contractual limitations differing from the statutes are void.

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. Her husband is not liable for her debts incurred in her separate business undertakings by virtue of the marriage relation. She may also contract with her husband with the same effect as though the married relation between them did not exist.

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. This law is quite elaborate and violations of the safety provisions of the act—resulting in injury to employees, usually results in liability even where the Kansas Workmen's Compensation Act does not apply, on the part of the mine operator to the employees because of the positive duty resting on the operator to comply with such statutory provisions.

Mortgages. A mortgage of real estate, to be valid as against subsequent bona-fide purchasers without notice, 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 valid as against attaching creditors without recording. Mortgages may be discharged on margin of record by mortgagee or attorney or assignee by duly acknowledged power of attorney or assignment 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, except in cases where she has never been a resident of the State. 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 on abandoned property or not occupied in good faith and the court so finds, 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 laws must be recorded within four months from that date or payment to the recent owner of the mortgage without notice of the outstanding assignment, 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. Uniform 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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 double the sworn value of the property. 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. 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 not paid by June 20 of the succeeding year, another five per cent penalty is added. 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.

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 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.

Warehouse Receipts. Practically the Uniform "Warehouse Receipts Act."

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 and the estate given a spouse by statute. 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 and at his request by two or more competent witnesses who saw him subscribe or heard him acknowledge it. Wills executed without the State in the manner prescribed by the law either of the place where executed or of the testator's domicile or of the State of Kansas are declared legally executed. Compliance with these requirements should appear in the witnessing clause. A will executed, proved, and allowed in another State, in the court of original probate, according to the laws of that State, may, relative to property in this State, be admitted to record in the probate court of the county in which such property is situated, by producing an authenticated copy of the will and order of probate admitting it to probate by the proper court of the county and State of which deceased died a resident, after due publication of notice thereof. 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

Revised by WOODWARD, WARFIELD & HOBSON, Attorneys at Law,
616 Inter-Southern Bldg., Louisville.
(See Card in Attorneys' List.)

Acknowledgments. Deeds executed within the State may be acknowledged before the clerk of the proper county court or a notary public, or may be acknowledged before and proven by two witnesses. Deeds executed without the State and witnin 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; if 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 notary public of the nation in which the acknowledgment was made 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 ,the officer may simply certify that the deed was acknowledged before him, and when it was done. All deeds must show source of grantor's title.

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. Limitations continue to run until summons issues.

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 and as often thereafter as the court requires.

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 or 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 regardless of the amount in controversy; from the quarterly court to the circuit court when the value in controversy, exclusive of interest and costs, exceeds $25; from the circuit court to the court of appeals as a matter of right in all cases in which the title to land, or the right to an easement therein, or the right to enforce a statutory lien is directly involved, and in all cases when the value in controversy, exclusive of interest and costs, amounts to $500 or more, but when such amount in controversy exceeds $200 and is less than $500, the party desiring the appeal may, upon payment of the tax and filing the record in the clerk's office of the Court of Appeals, enter a motion that the appeal be granted. If the court upon examination of the record decides the appeal should not be granted, the motion will be overruled without a written opinion, and no petition for a rehearing will be entertained, but if the court should be of opinion that the ends of justice require the judgment be reversed then the appeal will be granted and a written opinion will be filed. 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.

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 assignor 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 writ may issue against a defendant who is a foreign corporation or non-resident of the State; or has been absent from the State four months; or has left the State with intent to defraud creditors; or has left his county to avoid service of summons; or so conceals himself that summons cannot be served; or is about to remove, or has removed his property or material part out of the State not leaving enough to satisfy claim of plaintiff or defendant's creditors; or has disposed or is about to dispose of his property, with fraudulent intent to cheat, hinder or delay creditors. Also in action for money due upon contract judgment or award, if defendant have no property in State subject to execution, or not enough to satisfy plaintiff and collection will be endangered by delay in obtaining judgment and return of nulla bona. Also in action for personal property ordered to be delivered to plaintiff which as to part thereof has been disposed of, removed, or concealed, so that order of delivery can not be executed. Affidavit as prescribed by civil code and bond required, except no bond required in action upon nulla bona return.

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. A Department of Banking, providing for a Banking Commissioner, deputy commissioner and examiners of State banks, and prescribing their duties and for the examination of all financial institutions organized and doing business under the laws of the State was created by a law effective July 1st, 1912. The laws governing the State Banking Department have been amended and enlarged by acts of 1926, which should be consulted by those interested.

Blue Sky Law. The Blue Sky Law of Kentucky is a comprehensive regulation of the sale of corporate securities, based on the law of Michigan. Those interested should refer to provisions of the law.

Before transacting business in Kentucky investment companies issuing securities must file a detailed statement of their organization, plan of business, and financial condition with the State Banking Commissioner who has the power to investigate, approve or disapprove any such business proposed. Non-residents must appoint the banking commissioner agent for service of process. Books of all concerns must be open to inspection. Dealers must obtain licenses from the banking commissioner who may revoke them in certain cases.

The following classes of securities are exempted from the operation of the law:

Securities issued by the United States, any foreign government, any State or Territory or sub-division thereof; public utilities; banks, trust companies and building and loan associations; domestic cor-

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

porations without capital stock not organized for gain; of corporations listed in any standard manual except as otherwise provided; securities sold through a licensed dealer, member of a recognized stock exchange in Kentucky; listed on any stock exchange recognized by the Banking Commissioner or securities senior thereto; those sold or offered to a licensee under the act; unsecured commercial paper; mortgages on real or personal property in Kentucky where the entire mortgage is transferred; stock dividends and increase of stock sold and issued to stockholders.

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 or remove from the State 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.

Checks. The issuing of checks upon banks where the drawer has not sufficient funds is a felony if the check is for more than $20.00, and a misdemeanor if less; the only requisited liability is that the drawer must obtain goods or credit thereby. The old law required a fraudulent intent, and was amended, as above, by act of Mar. 20, 1926, but if the drawer of the check shall pay same within twenty days after receiving notice of dishonor of the check, he shall not be prosecuted: or if the prosecution has been begun, it shall be dismissed at cost of the maker of the check.

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. Formed under the general laws for transaction of any lawful business. Special regulations prescribed for foreign corporations doing business in the State, and for banking, building and loan, trust, insurance, and railroad companies. Cumulative voting for the election of directors prescribed. 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 corporation, to extent of the amount of their stock at par value in addition to amount of such stock; but persons holding stock, as fiduciaries, are not personally liable, but estates in their hands are in same manner and to same extent as other stockholders, and no transfer of stock operates as a release, of any such liability, existing at time of transfer, provided action to enforce the liability be commenced within two years from time to the transfer. Articles acknowledged and recorded like deeds in county in which 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 payment to State of license tax of one-tenth of 1 per cent on its capital stock, corporation is deemed organized; but, before transacting business other than with its own stockholders, at least 50 per cent of stock must in good faith be subscribed, payable at such times as board of directors may require.

By act of Mar. 1, 1926, the issual of no par value stock is permitted whereprovided for in the articles and such stock is deemed fully paid when consideration determined on by board of directors is paid. But for purposes of corporation license or franchise taxes value is fixed at $100.00.

In 1920 Kentucky adopted a "Blue Sky" law prohibiting the sale of stocks or securities (with named exceptions) until approved by the State Banking Commissioner, who requires full information on blanks furnished by his office. The 1920 Blue Sky law has been repealed and a new one substituted by act of March 23, 1926.

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

Credits. By an Act approved March 14, 1914, it is provided that a person who shall knowingly in person or through any agency make any false statement in writing with intent it shall be relied upon, respecting his financial condition, or means or ability to pay, for the purpose of procuring delivery of personal property, the payment of cash, the making of a loan or credit, or extension of credit, and procures upon faith thereof either or any of the things or benefits mentioned, shall be guilty of a felony and upon conviction, shall be confined in the penitentiary not less than one nor more than five years.

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

Depositions are the usual form of taking testimony in all equitable actions except that the court in its discretion, may order the testimony to be presented orally. They may be taken on all equitable actions and etc., and in ordinary or common law actions where witness resides twenty miles or more from place where court is held, or is absent from State, and in many other cases enumerated in the statute where the witness is privileged. Depositions are taken either on notice to opposite party or upon written interrogatories. The ordinary method of taking is upon notice, but where 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 court, the party receiving notice may require deposition to be taken upon interrogatories by giving notice to that effect to adverse party or his attorney upon same day, or day following one upon which first notice was served. Except in divorce cases, depositions are required to be taken upon interrogatories, if all 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. Officers authorized to take depositions in this State: An examiner appointed by judge of circuit court of this district, a judge or clerk of a court, justice of peace, or notary public. Depositions may be taken out of this State before a commissioner appointed by governor of this State or before a judge of a court, a justice of peace, mayor of city, notary public, or any other person empowered by a commission issued to him by consent of the parties or by order of court. If 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 officer's presence, or was written by officer in presence of witness and read to and subscribed by witness in presence of officer.

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 descending line only to the mother and her kindred.

Dower. (See Husband and Wife.)

Escheats. Land held by a corporation for more than 5 years, which is not proper and necessary to carrying on its legitimate business becomes subject to escheat. Land held by a non-resident alien for more than 8 years becomes subject to escheat.

Executions may issue upon judgment any time until collection of it is barred by limitation, but no execution shall issue on any judgment, unless ordered by the court, until after ten days from rendition. Execution constitutes lien on property of debtor from time it reaches hands of proper officer. Provided that such lien shall be void as to a purchaser for value without notice unless notice of such execution shall be filed in the office of the County Clerk. Execution may be replevied for three months, any time before sale under same, by defendant giving to the officer an obligation (replevin bond) payable to plaintiff, with good security for the amount thereof, interest and costs. A judgment to enforce a lien cannot be replevied. No replevy allowed upon judgment against any collecting officer, attorney at law, or agent, for a delinquency or default in executing or fulfilling 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 judgment for specific property, or for the property, or its value. If land sold does not bring two-thirds of appraiser's valuation, defendant and his representatives have right to redeem within a year from the day of sale, by paying purchaser or his representatives original purchase money and ten per centum per annum interest.

Exemptions. The following property of persons with a family resident in this Commonwealth, shall be 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 seventy-five dollars in value; two saddles and their appendages; two bridles; six chairs; or so many as shall not exceed ten dollars in value; one cradle; all the poultry on hand; ten head of sheep, not to exceed twenty-five dollars in value; all wearing apparel; sufficient provisions, including breadstuff and animal food to sustain the family for one year; provender suitable for live stock, if there be any such stock, not to exceed seventy dollars 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 fifty dollars 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 twenty-five dollars; ninety per centum of the salary, wages, or income earned by labor, of every person earning a salary, wages, or income of seventy-five dollars or less per month, provided that the lien created by service of garnishment, execution, or attachment, shall only affect ten per centum of such salary, wages, or income, earned at the time of service of process; of the salary, wages, or income earned by labor, of very person earning a salary, wages or income in excess of seventy-five dollars per month, sixty-seven and one-half dollars per month and no more shall be exempt.

Tools of a mechanic, not exceeding one hundred dollars in value libraries of ministers of the Gospel, professional libraries of lawyers professional libraries and instruments of physicians and surgeons, not to exceed in value five hundred dollars. In addition to personal property there is for actual bona fide housekeepers with a family resident in this Commonwealth a homestead exemption of so much land including the dwelling house and appurtenances owned by debtor as shall not exceed in value one thousand dollars. This does not extend to a mortgage on or purchase money due for the land or for debts or liability existing prior to the purchase of the land, or of the erection of the improvements thereon.

Personal property or money on hand or in bank to the amount of $750.00 shall be exempt from distribution and sale and shall be set apart by the appraisers of the estate of an intestate to his widow and children, or, if no widow, to his infant children or child surviving him. The appraisers shall state in their appraisement the money or the articles and value of each set apart by them to the widow, or infants, separately to the articles appraised for sale, but if the widow be present at the time of the appraisement, or any one authorized by her in writing, she may make her selection out of the property appraised to the amount of said $750.00 and said appraisers shall so report. The provisions of this section shall apply to cases where the husband dies testate, and the widow renounces the provisions of the will in the time prescribed by law.

Holidays. The 1st day of January, February 12th (Lincoln Day); the 22d day of February, the 30th day of May, the 4th day of July, the first Monday in September (Labor Day), the 12th day of October (Columbus Day), the 11th day of November (Armistice 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 shal occur on Sunday, the next day thereafter shall be observed as a holiday.

Husband and Wife. By an act which took effect June 12, 1894, the following important changes were made in the common law of coverture which theretofore prevailed in Kentucky. Marriage gives to the husband during the life of the wife no interest in any of the wife's property. She has full power to contract and to bind herself and her property, except that she can not bind herself to answer for the debt, default, misdoing of another, except as to property set apart for that purpose by mortgage. She may sell and dispose of personal property as if unmarried, but may not sell or convey real estate unless her husband unites in the contract, or conveyance unless empowered to do so by decree of court, in case of insanity, conviction of felony, or abandonment by the husband. After the death of either husband or wife the survivor shall have a life estate in one-third of all the realty of which the decedent was seized in fee simple during the coverture unless such right shall have been forfeited or relinquished. Such survivor has also one-half the personalty of the decedent left after the payment of debts. Abandonment and living in adultery by either party, or divorce works a forfeiture of these rights.

Interest. The lawful rate of interest is 6 per centum per annum, and contracts for a greater rate are void as to the excess of interest. The Court of Appeals has refused repeatedly to allow attorneys fees to be collected.

Judgments. A judgment does not constitute a lien on property in this State. All judgments bear interest from their dates. Judgment can be kept alive for 15 years additional by having execution issued at any time within 15 years after date of judgment. (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 parentees, who have held possession for seven years. Five

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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, though as to the makers of an undiscounted note it is fifteen years and as to sureties seven years; actions upon accounts between merchants, and actions for relief from fraud or mistake. Two years: Actions upon merchant's accounts for goods sold. One year: Actions for injury to person or character and for breach of promise of marriage.

Merchandise in Bulk. An Act of the 1920 Legislature provides that when any one who shall buy any stock of goods in bulk or fixtures before he shall deliver to the vendor the purchase price or any promissory note therefor shall obtain from the vendor a verified written statement of all the creditors of the vendor together with their addresses and the amount of indebtedness due to each, also an accurate inventory of the stock or fixtures to be purchased and making it the duty of the vendor to furnish such statement under oath. Upon receiving such a statement the purchaser shall notify, personally or by registered mail, each of the creditors of said vendor as appears on the list, of the proposed sale, the price to be paid therefor, the conditions of the sale and a copy of the statement furnished by the vendor. This notice shall be given or sent at least ten days before the completion of the sale. If any such purchaser fails to obtain a verified statement from the vendor or to give the notice to the creditors as above or to see that the proceeds of the sale are prorated among creditors according to dignity of their claims then such sale or transfer shall be fraudulent and void and shall operate as a general assignment for the benefit of the creditors of the vendor and the purchaser shall at the suit or option of the creditor be held liable to the creditors for the fair value of all property so bought or sold, provided, however, such suit must be brought within four months.

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 certain sum 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, thus differing from the uniform negotiable instruments law as enacted elsewhere. 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.

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, because in all cases notice of dishonor is necessary to charge parties secondarily liable.

Taxes. State and County taxes in Kentucky for any year are a lien against real estate from and after July 1st of the preceding year. The cities and towns of Kentucky are divided into six classes and the liens of the various classes for taxes on real estate date from the following:

First Class, September 1st for succeeding year.
Second Class, July 1st, for succeeding year.
Third Class, from date fixed by City Council for succeeding year
Fourth Class, April 1st for current year.
Fifth Class, September 15th for succeeding year.
Sixth Class, July 1st for succeeding year.

Taxes due the State by banks and trust companies are payable directly into the State treasury on or before the first day of July succeeding reports by their chief officers required to be made to auditor of public accounts, and taxes to counties, cities, towns and districts are paid at the time fixed by law for payment of like taxes.

Wills. Any person of sound mind and over twenty-one years of age may make a will. Wills must be in writing with the name of the testator subscribed thereto either by himself or by some other person in his presence and by his direction. If not wholly written by the testator the subscription must be made or the will acknowledged by the testator in the presence of two witnesses, who shall subscribe their names in the presence of the testator. The will of a person domiciled out of this State is valid as to personalty, if executed according to the law of the domicile; but to be valid as to lands, it must be executed as required by the law of this State. The county court has exclusive original jurisdiction over the probate of wills. Holographic wills are valid.

SYNOPSIS OF

THE LAWS OF LOUISIANA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by Messrs. MERRICK & SCHWARZ, Attorneys at Law, 1107 Canal-Commercial Bank Bldg., New Orleans.
(See Card in Attorneys' List.)

Accounts. (See Acknowledgments.)

Acknowledgments. The uniform foreign (Act 154 of 1916), and domestic (Act 226 of 1920) acknowledgment laws have been adopted.

Acknowledgments may be taken within the state by a notary public or by a recording officer.

Acknowledgments may be taken in the United States, outside of the state, by any judge, justice of the peace, notary, commissioner for Louisiana, or by any officer authorized to take acknowledgments where he acts.

Acknowledgments may be taken in foreign countries by any ambassador, minister, envoy or charge d'affairs of the United States, in the country to which he is accredited, or before any officer of the United States, a notary public, or a commissioner or other agent of Louisiana authorized to take acknowledgments, if such officers have an official seal, and are commissioned or accredited to act where the acknowledgment is taken.

Any commissioned officer of the army or navy of the United States is authorized to take acknowledgments in any foreign country in which he may be serving. (Act 192 of 1918.)

All acknowledgments taken within the United States must be witnessed by two witnesses over the age of fourteen years, who must subscribe the certificate of acknowledgment. If the party making acknowledgment be blind, three witnesses are required. Witnesses are not necessary when acknowledgments are taken outside of the United States. The officer taking the acknowledgment must not act as a witness. While a female may act as a witness, this is of doubtful advisability.

The acknowledgment of a married woman may be taken as though she were single, separate examination being unnecessary.

No authentication is required or certificates of acknowledgments taken in the state, or taken in foreign countries, or taken in the United States by notaries public, or commissioners for Louisiana, under their official seals. Certificates of acknowledgments taken in the United States before other officers must be authenticated by a certificate of a secretary of state as to the capacity of the officer.

Authentication for use out of the state may be the secretary of state, whose fee is one dollar, or by any clerk of a court record, civil district or federal court, whose fee is fifty cents.

Actions. Commenced by petition setting forth cause of action, articulately in numbered paragraphs, signed by plaintiff or his attorney and duly sworn to. Plaintiff must give resident security for costs or make deposit to cover same if demanded. (See Act 300 of 1914 regulating pleadings and practice.) After filing of petition, defendant is cited to appear ten days after receipt of citation in District Courts and Justice of Peace courts outside of city of New Orleans. One day additional for every ten miles his residence s distant from court. Delay in no case to exceed fifteen days. In city courts of New Orleans, defendant must appear three days after receipt of citation. Neither day of service nor day on which answer must be filed is included in delay. If defendant fails to appear, judgment by default is rendered against him. In district courts such judgment is confirmed two judicial days after preliminary entry of default. In Justice of Peace courts judgment of default is confirmed the same day as that on which default is entered.

Administration of Estates by executors, administrators, or tutors who are ex-officio administrators—also by dative executors—where there is no heir present or agent of heir, public administrator takes charge in New Orleans. 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. Stock in local corporations may be transferred by non-resident, executors, etc., without the necessity of securing an order from the local court, but no transfer can be made until the inheritance tax is adjusted. No debts can be paid by administrator without authorization of probate court. The administrator or executor presents to the court an account or tableau of distribution setting forth the payments and disbursements he proposes to make. Parties interested are notified by publication to show cause within ten days why the account so filed should not be approved. Any party interested may oppose the account by opposition in writing at any time within the said ten days In absence of opposition account is homologated upon production of satisfactory evidence by administrator or executor, and the funds ordered distributed in accordance therewith.

Claims against estates should be presented in writing to the administrator or executor. Should he approve the same in writing, no further action is required except to see that the claim is placed upon his account when filed. Should he decline to recognize the claim, creditor may file suit against succession representative and obtain a judgment to be paid in ordinary course of administration. If there is no danger of prescription, creditor may await filing of account and then oppose same of claim, not included.

Affidavits. (See Acknowledgments.)

Aliens. No alien who is ineligible to citizenship of the United States may hold land or any real right. Aliens may not vote.

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.]

Assignments and Insolvency. State insolvent laws superseded by National Bankruptcy act.

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 one and one half 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.) Bond for $250 is sufficient if debtor resides outside of state but bond may be increased to amount of claim upon order of court at demand of debtor. Garnishment may be had as an accessory either to a writ of attachment or fieri facias. Attachment may now issue for an offense, quasi offense or tort if defendant is non-resident (Act 215 of 1920).

Banks. Banking corporations organized under 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 be five or more. No special act of incorporation can be passed. 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. Money or other valuables deposited by married women or minors may be drawn out without the authority of their husbands or tutors. 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. Such banks can not issue notes and must have a capital not less than $100,000, which must be paid up in cash. (See Act 121 of 1910, amending Act 45 of 1902 as to capital required in cities of less than 30,000.) (See also Act 179 of 1902, and amendment thereof, Act 140 of 1906 and amendment thereof, Act 152 of 1910 and amendment thereof, Act 96 of 1912 and Act 184 of 1916.) Act 238 of 1910, amending Act 45 of 1902, provides for branches. Act 112 of 1910 creates a State Banking Department having supervision over all state banks. Amended by Act 48 of 1912.

Chattel Mortgages. As provided for by Act 198 of 1918, any kind of movable property may be mortgaged for debts, for money loaned, future advances or to guarantee contractural obligations. The act of mortgage must be passed before a Notary Public and two witnesses and must be recorded in Parish where property is situated and Parish where mortgagor resides in order to affect third persons without notice. Chattel so mortgaged cannot be transferred from one parish of the State into another without written consent of mortgagee.

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Collaterals must be delivered to be effectual. Act 9 of 1914 makes it a felony for a customer of bank to wrongfully dispose of collateral security pledged to bank. Uniform Bills of Lading law obtains. (Act 94 of 1912.)

Conditional Sale. Act 119 of 1918 makes lawful a conditional sale of tank cars providing for retaking of car by conditional vendor without right of redemption being given to vendee, all payments of such date of retaking being forfeited. Act 111 of 1894 provides for conditional sale of railway equipment. Other conditional sales of movable property are ineffective as between the parties or innocent third persons.

Conveyances. 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 in Parish of Orleans 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. (5) The marital status, of all parties must be given. When a married woman executes a deed she must be authorized by her husband. The husband acts alone in the sale of community property; the signature of the wife being unnecessary. Either husband, or wife, if husband refuses to do so, may designate family home by registration. If so designated, wife's signature necessary to pass title.

Corporations. 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. 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 banking and insurance, homestead and building and loan associations. Fifty per cent of capital stock must be subscribed before filing articles of incorporation and 50 per cent of all stock subscribed must be paid in before corporation engages in business and the remainder in twelve months under penalty of dissolution. The legislature can not pass a special act conferring corporate powers. Corporation committing a trespass or damage may be sued at place where it occurred. [Act 22 of 1894.] (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. No corporation can declare dividends out of its capital stock, under penalty of forfeiture of its charter. Meetings of corporations must be held at domicile. [Act 63 of 1910.]

Foreign Corporations may be licensed and taxed by a mode different from that provided for home corporations. 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. 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 a resolution authorizing the appointment of an agent together with a power of attorney appointing an 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 and such corporation must show its principal place of business and the places of business it proposes to have in Louisiana.

Foreign corporations must file in office of secretary of state a written declaration setting forth 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 amended by Act 284 of 1908. Act 284 of 1908 amended by Act 243 of 1912. See Act 194 of 1912.) Act 107 of 1922 requires foreign corporations doing business in this state to pay a tax of one-twentieth of 1 per cent on the amount of the capital stock employed in this state. Act to operate prospectively only.

Act 267 of 1914 relating to corporations repealed several previous acts and undertakes to embody in one act all essential details with respect to the organization, power and duties of trading corporations, foreign and domestic. (As to non-trading corporations see Act 259 of 1914.) Non par value stock in corporations by act 96 of 1924.

Courts. Terms and Jurisdiction. In parishes other than Orleans; Justices' courts, concur rent with District courts up to $100. 2. District courts, concurrent with justices' courts, up to $100, exclusive for all civil matters over $100, and in all probate matters and appellate jurisdiction in all civil matters in justices' courts. In Orleans parish, 1. City courts, exclusive up to $100. Concurrent with Civil District court from $100 to $300. 2. Civil District court, concurrent up to $300, exclusive over $300. 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 during 9 and ½ months of the year, 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 courts en bano may by rule determine. On all amounts up to $2,000, inclusive and in suits for damages or death caused by wrongful injury, an appeal may be taken to the court of appeals, from the city and district courts respectively, and on all amounts over $2,000, except suits for damages or death caused by wrongful injury, to the state supreme court. An appeal lies on both law and facts. Appeals from the city courts shall be tried de novo, except suits for amounts between $100 and $300.

Days of Grace. Abolished.

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. The deposition of a fugitive from justice is not admissible in evidence. (Also see Act 176 of 1910.) The uniform foreign dispositions act has been adopted (Act 34 of 1922.)

Descent. 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 excludes all other ascendants of a more remote degree. 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 leaves at his decease a legitimate child. one-half if he leaves two children, and one-third if he leaves three or more. If he leaves no descendants but a mother or father or both, cannot exceed two-thirds. If a brother or sister or both as well, cannot exceed three-fourths. The remaining third or fourth, as the case may be is the legitime of the father or mother. Exemptions: $5,000 for direct descendant, ascendant, or surviving spouse, $1,000 to collaterals, $500 to strangers. Tax: To descendants, etc., 2 per cent from $5,000 to $20,000, 3 per cent above $20,000. To collaterals, 5 per cent on $1,000 to $20,000, 7 per cent above $20,000. To strangers 5 per cent from $5,000 to $50,000, 10 per cent above $5,000. 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. R. C. C. 915 amended to read, "In all cases when either husband or wife shall die leaving no descendants, nor father nor mother without having disposed by last will and testament of his or her share in the community property, such undisposed of share shall be inherited by the survivor in full ownership. If deceased spouse leaves father or mother, or both, and surviving spouse, one-half of deceased's share of community goes to father and mother or survivor of them and one-half to surviving spouse.

Divorce. (See Separation from Bed and Board.)

Dower. (See Married Women.)

Employers Liability Act. There is a general Employers Liability Act in the State setting forth special compensation for various injuries.

Execution. Property taken under a writ of fieri facias must be advertised and appraised, and can not be sold for less than two-thirds of the appraised value, until it has been re-advertised. Advertisements of movables three times in ten days—of real estate once a week for thirty days. If two-thirds of appraised value is not bid, property must be re-advertised for fifteen days, and sold on a credit for twelve months for whatever it will bring. There is no redemption of property sold under execution or mortgage. No stay of execution is given except on appeal, and execution may issue at any time after the delay for appealing suspensively has expired. Act 113 of 1906 authorizes sheriffs and constables to put purchaser of seized property in possession. On proper petition the court can order an examination of a judgment debtor as to his assets and liabilities. (Act 198 of 1924.)

Exemptions. To head of family, real estate is owned and occupied as a residence, together with certain furniture, stock, implements, provisions, etc., the property not to exceed $2,000, means or property of wife deducted from exemption of husband. If the property exceeds $2,000 in value, it may be sold. Beneficiary entitled to $2,000 of proceeds. No registry, required in parishes other than Orleans. Surviving spouse or minor child or children may claim benefit of this exemption. Widow or minor children surviving is entitled to $1,000 of out deceased husband's estate, if in necessitous circumstances, by preference over even a first-mortage 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 right of personal servitude, of use and habitation, of usufruct to the estate of a minor child, the income of total 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.)

Fraud vitiates all contracts. Action barred by one year limitation to annual sale on account of fraud. For fraud on part of purchasers of goods see Act 114 of 1912 amending Act 94 of 1896.

Garnishment. Wages earned out of this State and payable out of this State, shall be exempt from attachment or 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 exemptions unless the defendant is actually served with process. (Act 165 of 1904.) (See Attachment.)

Holidays. Sundays, January 1st, January 8th, February 22d, Good Friday, (and Mardi Gras or Shrove Tuesday in New Orleans), June 3rd, to be known as Confederate Memorial Day, July 4th, the first Monday of September, to be known as Labor Day, October 12th, Christopher Columbus Day, November 11th, Thanksgiving Day, as designated by the President of the United States, December 25th, and all general election days, whether Presidential, Congressional, State, municipal or parochial, in the localities where said elections are held; and in the parish of Orleans, Mardi Gras, and in cities or towns where the population exceeds 10,000. Saturdays from twelve o'clock noon to twelve o'clock midnight, to be known as a half holiday.

Husband and Wife. (See Married Women.)

Interest. Legal rate is 5 per cent, but 8 per cent may be agreed upon in writing. If higher than 8 per cent is charged, it is reducible to 8 per cent. If paid, it may be sued for and recovered within two years.

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.

Liens or Privileges. The following have special privileges, viz.: 1. Lessor'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 innkepeer 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.) Privilege on crops to be recorded (Act of 1890.) The

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

vendor of an agricultural product of the United States has a five days' privilege for unpaid purchase price in preference to all others. Privilege granted employes in saw mills etc. (Act 145 of 1888, amended by Act 52 of 1910 and Act 23 of 1912. Widow and children left in necessitous circumstances are entitled to an amount in husband's or father's succession sufficient to make $1,000 inclusive of property already possessed by them. This privilege primes all others except vendor's privilege, that for expenses of selling property and conventional mortgages, representing money actually loaned for not less than one year as not exceeding 6 per cent for interest, discount and charges.

Limitation of Actions. Limitation of actions, or of prescription, under the law of Louisiana is a manner of acquiring ownership of property, or of discharging debts by the effect of time and under the conditions regulated by law.

Of the prescription by which the ownership of property is acquired. He who acquired an immovable in good faith and by a just title prescribes for it in ten years, provided he has had continuous and uninterrupted possession during that time. This runs against minors in twenty two years from birth and all others excepted by law. Act 161 of 1920.

The ownership of immovables is prescribed for by thirty years without any need of title, and without reference to good faith, provided there has been continuous and uninterrupted possession as owner during this time.

If a person is possessed in good faith, and by a just title of a movable during three years without interruption he acquires the ownership by prescription, unless the thing was stolen or lost.

When the possessor of any movable whatever has possessed it for ten years without interruption he shall acquire the ownership of it without being obliged to produce a title, or to prove that he did not act in good faith.

Prescription runs against all persons unless they are included in some exception established by law.

Minors and persons under interdiction cannot be prescribed against except in certain cases provided by law.

Husbands and wives cannot prescribe against each other.

Of the prescription which operates a release from debt. Various actions are prescribed by one year. Among these may be mentioned those of masters and instructors for lessons which they give by the month. Those of inn keepers, on account of lodging and board which they furnish. Those of retailers of liquors. Those of workmen, laborers and servants, for the payment of their wages, and actions for injurious words, whether verbal or written. Those for damages caused by animals, and all actions for damages for torts.

This prescription runs against minors and interdicted persons, reserving, however, to them their recourse against their tutors and curators.

Actions by or against common carriers for collection or recovery of freight charges or for loss of or damage to freight are prescribed by two years from date of shipment.

The following actions are prescribed by three years, to wit: First—That for arrearages of rent charges, annuities and alimony, or for hire of movables and immovables. Second—That for payment of money loaned. Third—That for the salaries of overseers, clerks, secretaries and of teachers who give lessons by the year or quarter. Fourth—That of physicians, surgeons and apothecaries for visits, operations and medicines. Fifth—That of parish recorders, sheriffs, clerks and attorneys for their fees and emoluments. Sixth—That on accounts of merchants. Seventh—That on all other accounts. Eighth—Tax inscriptions. Ninth—Licenses. Tenth—Inheritance taxes as against purchasers and third persons in good faith.

This prescription runs against minors and interdicted persons, reserving to them, however, their recourse against their tutors and curators.

Four years' prescription applies to special action—as action of minor against tutor respecting acts of tutorship; of minor for rescission of judgment; action of lesion.

The following actions are prescribed by five years, to wit: Actions on bills of exchange, notes payable to order on bearer, except bank notes. Those on all effects negotiable or transferable by endorsement or delivery, and those on all promissory notes negotiable or otherwise. Inheritance taxes as against heirs in five years from opening of successions.

This prescription runs against minors and interdicted persons, reserving to them, however, their recourse against their tutors and curators.

Second—Actions for the nullity or recission of contracts, testaments or other acts.

Third—Actions for the reduction of excessive donations.

Fourth—Actions for the recission of partitions.

All informalities connected with or growing out of any public sale made by any person authorized to sell at public auction, shall be prescribed against by those claiming under such sale after the lapse of five years from the time of making it, whether against minors, married women or interdicted persons.

All personal actions, except those above enumerated, are prescribed by ten years.

Actions for immovable property, or for an entire estate, as a succession, are prescribed by thirty years.

Limitation on Tort Actions. All actions on torts are prescribed by one year.

Limitations to Suits. Prescription — Accounts stated and acknowledged in writing are prescribed only by ten years. (Act of 1888.) Personal actions one year. Action for torts of all kinds; for injury to or non-delivery of merchandise shipped on vessels; for fees of justice, notary, or constable; for innkeepers' accounts; for accounts of retailers of liquors; for wages of laborers or sailors; for freight; and for tuition by month. Three years: Action for arrearages of rent charges, or hire of movables or immovables or money lent; for salaries of overseers, clerks, or tuition by quarter or year; for fees of physicians apothecaries, attorneys, sheriffs, clerks, and recorders; on open accounts of merchants, whether wholesale or retail, and others. Four years: Actions by minors against their tutors, counting four years from majority. Five years: Action on bills of exchange or promissory notes, counting from maturity, and for nullity of contracts or wills; for recision of partitions; to set aside public and judicial sales for informalities. Ten years: All other actions; the right to a usufruct or servitude, all judgments, whether rendered within or without the State, but judgments may be revived before lapse of ten years, and are then good for ten years from date of revival. Prescription of ten and thirty years now runs against minors, interdicts and married women (Act 161 of 1920). Husband and wife can not prescribe against each other. Promise to pay or payment on account will interrupt prescription. Only written promise to pay will revive when prescription has accrued.

Limited Partnerships. (See Partnership.)

Married Women. Act 94 of the Legislative Session of 1916 provides that a married woman of this State shall be competent to contract and bind and obligate herself personally and with reference to her separate and paraphernal property, and to appear in Court and to sue and be sued to the same extent and in the same manner as though she were a femme sole; provided that nothing herein contained shall be deemed or construed to affect in any way the statutes of this State, establishing and regulating the matrimonial community of acquets and gains, and prescribing what shall be deemed community and what be deemed separate property of the other spouse. This act does not permit wife to contract with husband, or pledge her property or otherwise obligate herself for the benefit of her husband. Revenues of all separate property administered by the husband, and all property acquired by either husband or wife after marriage, except by donation or inheritance constitute part of community, unless bought with the separate means of either and as a separate acquisition. 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, otherwise husband or wife cannot testify in favor or against the other even though both litigants consent. 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, if there is issue, the usufruct of the other half, unless this half is disposed of by will of deceased spouse. Wife cannot be a witness to husband's will. (See "Liens and Privileges.")

Monopolies or Trusts are regulated and rights are given against them similar to those existing under Federal Law. The state authorities may take action and the individual may recover threefold damages sustained. See House Bills Nos. 7 and 8, extra session 1915, approved June 10, 1915.

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, except as provided under "Trusts." 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 cannot have that effect until after adjournment of court. [Act 1888.] Lessees obligated to erect buildings, etc., upon leased property, can mortgage the lease, together with the improvements, etc. [Act 21 of 1908.] Leases and contracts to explore for oil, gas and minerals may be mortgaged. [Act 232 of 1910.]

Negotiable Instruments. "Negotiable Instrument Act" (No. 64 of 1904) changes in many respects the laws formerly applicable to bills and notes. 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 a 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. 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." Acceptance must be in writing and signed by drawee. It must not express that drawee will perform his promises by any other means than payment of money. [Act 189 of 1908.]

Partnership, Limited and Special. Stipulations that one shall participate in the profits and shall not contribute to losses is void, both as regards partners and third persons. 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. Ordinary partnerships are all such as are not commercial. There is also a species of partnership which may be incorporated with either of the other kinds, called partnership in commendam. It is formed by 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.

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.

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. If presumptive heir does not begin legal proceedings to settle succession within ten days after death of "de cujus," creditors may demand that he state whether he accepts or rejects succession, or if no heirs appear, that a curator ad hoc be appointed to settle the estate. The judge appoints an

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

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 Negotiable Instruments.)

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. Divorce may now be obtained if both parties have lived separately for seven years.

Judgment of Divorce. "A vinculo matrimonii" can be obtained immediately for first two causes. For other causes it is necessary first to obtain judgment of separation "a mensa et thoro." After judgment of separation from bed and board, if there has been no reconciliation, party in whose favor judgment is rendered can obtain final divorce one year after finality of judgment of separation. Party against whom judgment is rendered must wait two years. When marriage is celebrated outside of state parties cannot obtain divorce in state on grounds occurring outside of state.

Taxes. Taxes on real estate cannot 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 5¼ mills on actual value, parish taxes not exceeding 4 mills. City of New Orleans taxes are 23½ mills on 90 per cent of actual value, other municipal taxes not to exceed 7 mills. Delinquent state taxes bear interest at 2 per cent a month, city taxes, 10 per cent a year.

Wills. There are four different kinds of wills, viz.: The holographic, 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, over the age of 16 years complete, not insane, deaf, dumb or blind, 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. Wills executed without the state given force and effect provided same be in writing and subscribed by testator and follows form of place where executed, or of testator's domicile. (See act 176 of 1912.)

Trusts. Act 107 of 1920 permits donations inter vivos or mortis causa to be made whereby individuals or State Bank and Trust companies or banks organized under Federal laws may be made trustees These trusts to last not longer than 10 years after death of donor unless the cestui is a minor, at death of donor, in which case they may last till 10 years after his majority. The legitime may thus be administered in trust.

SYNOPSIS OF

THE LAWS OF MAINE

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by PULSIFER & LUDDEN,
68 Maine St., Auburn, Me.
(See Card in Attorneys' List.)

Acknowledgments. (See Deeds.)

Actions. At law begun by writ, under common law practice, but containing declaration. Suits in equity are begun by bill of complaint, filed with clerk of court and subpœna issued by him, or may be inserted in writ of attachment and served by copy of bill and writ. On motion non-resident plaintiffs required to give security for costs. An affidavit in actions brought on an itemized account, made before a Notary Public, makes a prima facie case, if without the State authority of Notary must be certified by clerk of court of record.

Administration of Estate. (See Estates of Deceased Persons.)

Affidavits. Affidavits may be made before a notary public or justice of the peace. In some court matters authority of magistrate must be proved by certificate of clerk of a court of record.

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).

Arbitration. Judge of probate court may authorize executors or administrators to adjust by arbitration claims for or against the estates represented by them. All controversies which may be the subject of personal action may be submitted, by the parties, to referees for arbitration. Majority of referees may make report to Supreme or Superior Courts.

Arrest. (See Executions.) In actions ex delicto, on mesne process and execution, as of course without affidavit or order; in actions ex contractu, on mesne process, upon affidavit of the creditor, his agent, or attorney, that he has reason to believe and does believe that the debtor is about to depart and reside beyond the limits of the State and carry with him means of his own more than are necessary for his immediate support, and that at least $10 is due on the claim; on execution, only after supplementary proceedings and fraud proven, but if contract judgment or action existing March 17, 1887, arrest on execution. Debtors arrested on mesne process or execution may disclose, give up property not exempt from attachment and be discharged from arrest, or may give bond and disclose according to its terms. 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. Assignments of wages must be recorded in town clerk's office.

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 continue 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 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 wages, for personal labor of the debtor, wife or minor child within one month, and $10 exempt in all cases. 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. Trust companies may be organized under general statutes on obtaining approval of state bank examiner. 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 2 1-2 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. Corporations, if licensed by bank commissioner may receive savings deposits from their employees. Dealers in securities must be registered with bank commissioner and are subject to certain regulations.

Collaterals. (See Mortgages.)

Conditional Sales, Consignments. No agreement that personal property bargained and delivered to another shall remain the property of the seller until paid for, is valid unless in writing and signed by the person to be bound. Such agreement, in whatever form it may be, is not valid except as between original parties, unless recorded in the office of the clerk or the town in which the purchaser resides at the time of the purchase. All such property whethers aid agreements are recorded, or not shall be subject to redemption. This does not apply to goods consigned for sale.

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 ourside 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 If corporation fails for six months to elect directors, court may appoint. 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 $500,000, $50; above $500,000, $10 for every $100,000 of capital. Other fees for organization are: attorney-general's fee $5; register of deeds $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 to $200,000, $10; exceeding $200,000 and up to $500,000, $50; exceeding $500,000 and up to $1,000,000, $75; and the further sum of $50 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, but are required to file copy of charter with secretary of state, also a copy of the by-laws, and are also required under severe penalties to file certificate showing among other things the names of officers, amount of capital stock authorized, amount issued and amount paid in; also must file certificate showing any change in above particulars. Such corporations must also appoint a resident of Maine, having an office or a place of business in the state, to be its attorney on whom process may be served in any legal proceeding. Corporations may dispose of their franchises on majority vote of the stockholders; may sue and be sued, and have generally the powers of individuals. Public service corporations are subject to a Public Utilities Commission.

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 en banc on question of law, from trial terms and superior courts. Superior courts: In Cumberland County except equity, real actions, extraordinary legal remedies and some others; exclusive jurisdiction with exceptions to $500 and in divorce, 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. Androscoggin County; exclusive jurisdiction, with exceptions to $500; concurrent in divorce; sits at Auburn first Tuesdays of February, April, June, October and December. Courts of probate: Usual jurisdiction concurrent in equity 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 repleviable.

Days of Grace. (See Negotiable Instruments.)

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 having a seal, 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 commis-

Digitized for FRASER
https://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

sioner of deeds for this State, and in a foreign country before a notary public, or a consul or minister of the United States, but if magistrate acting outside of State has no official seal, his authority and the genuineness of his signature must be authenticated by the clerk of a court of record in county where he resides. 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, except 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.)

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 (or if incapacitated with no guardian in this state, other being a non-resident) may be barred of inheritance upon application to supreme judicial court and decree after hearing. (See Estates of Deceased Persons.)

Estates of Deceased Persons. One year after notice of appointment allowed creditors to present claims and suit must be begun and service of process made within twenty months after such notice of appointment. 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. No administration granted after twenty years. 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 payments 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 or 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, widow or kindred, it escheats to the State. An illegitimate child is an heir of its parents who intermarry; also of its mother, also of its father, who adopts it or acknowledges it before a magistrate; and in any case where the child is treated as an heir it inherits from the lineal and collateral kindred of the parent, and they from it. (See Wills.)

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. 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.

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, except suits for necessaries. (See Attachment.)

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.

Frauds and Perjuries. 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 state; 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. Contracts whereby one becomes agent for sale of lands become void in one year unless time for termination definitely stated.

Garnishment. (See Attachment.)

Holidays. January 1st, February 22nd, April 19th, May 30th, July 4th, first Monday of September, December 25th, and days of public fast or thanksgiving appointed by the Governor and Council, or by the President of the United States.

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. Equity Court has special jurisdiction of disputes between husband and wife relating to property. After petition to and decree by probate court either may convey real property as if sole, and other is barred of all right by descent where deserted without just cause or if actually living apart for just cause, and desertion or living apart has continued one year.

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 $300 secured by mortgage or pledge of personal property, the rate shall not exceed 3½ per cent per month. Loans negotiated in this state by agent of non-resident borrower with intent to evade usury laws of state where borrower resides are voidable.

Judgments. At law; by general order at end of term on all cases where verdict or default, unless stayed by proceedings for new trial, or continued for judgment by plaintiff; in equity, only by decree signed by justice. No lien except by virtue of attachment on mesne process (q. v.) and where specially provided by law.

Liens. (Voluminous Statute Provisions, for Mechanics, Material Men, Hotel and Boarding-House Keepers, Stable Keepers, Agister, etc.).

Limitation of Actions. Six years; debt on unsealed contract or liability (except judgments); actions upon judgments out of State of court not of record; for arrears of rent; of account, assumpsit, or case on contract or liability express or implied; waste; trespass qu. cl. and d. b. a.; 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 recognizance. Eighteen months: stolen bonds and coupons, except by owner. Twenty years: witnessed notes, bank bills, specialties, real action, other judgment and all other personal actions. Suit begun when writ was 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, twenty 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.

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.

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. May not be partner of husband and not liable for family expense except by express promise. (See Arrest, also Dower, also Estates of Deceased Persons, also Husband and Wife.)

Mortgages. Of real estate executed and acknowledged as deeds and must be recorded as to third parties; convey fee with condition of defeasance. Foreclosed without possession by serving or advertising notice, or by possession obtained peaceably, or by consent, or by suit. Redemption in one year from notice or possession; 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 unless and until possession taken and retained by mortgagee to be good against third parties must be recorded in town clerk's office where mortgagor resides when mortgage is given; or, if any of mortgagees are non-residents, then in registry of deeds in county where mortgagee resides, when mortgage is given. 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 sixty 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.

Negotiable Instruments. Days of grace abolished except as to sight drafts. 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 suits 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. Legal holidays are January 1; February 22; April 19; May 30; July 4; first Monday in September; Thanksgiving; Christmas, and Arbor Day. If note reads "I promise to pay" all signers are jointly and severally liable.

or FRASER
er.stlouisfed.org
serve Bank of St. Louis

Partnership. Personal property of partnership, or interest of partner therein, exempt from attachment on mesne process, or seizure on execution for any individual liability or such partner; but is statutory provision for reaching same after judgment. Partners in mercantile enterprise must file sworn certificate with city or town clerk where business to be carried on, showing names and residences of partners, nature of business and partnership name. (See Limited Partnership.)

Powers of Attorney. Usual common law rules.

Probate Law. (See Estates of Deceased Persons.)

Protest. (See Negotiable Instruments.)

Replevin. Goods or chattels wrongfully taken or detained may be replevied by owner or party entitled to possession. Replevin bond must be double the value of property replevied. If dismissed without trial, suit may be brought on the bond, in which suit title may be shown to mitigate damages.

Taxes 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 10 per cent interest from day of sale; residents, two years with 10 per cent interest from day of sale on whole sum of tax and costs. Land on which taxes are unpaid, sold on first Monday in February 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 $50.00, if capital does not exceed $500,000.00; of $75.00, if capital does not exceed $1,000,000.00; and the further sum of $50.00 for each $1,000,000.00, or fraction thereof, in excess of $1,000,000.00. Foreign corporations pay annual license fee of $10. Inheritance tax ranging from 1 to 7 per cent, according to degree of relationship and amount of bequest, $500 exempt in all cases, and $10,000 exempt in case of certain near relatives. Special exceptions and exemptions from assessment, and special provisions for taxing personal property situated here but owned out of the State. Real estate mortgages exempt. (See Banks.)

Wages. Weekly payment required in most industries. (See Assignments, Attachment.)

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 passed 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 not beneficially interested, 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. (But see Husband and Wife.)

Nuncupative will must be reduced to writing within six days, or proved by testimony within six months, from time words spoken. No letters in such till fourteen days after decease of testator. Not effectual to dispose of more than $100.00 worth of property unless proved by three witnesses who acted at testator's request.

SYNOPSIS OF

THE LAWS OF MARYLAND

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by T. HOWARD EMBERT, Attorney at Law, 200-5 Linthicum Bldg., 20 Lexington St. E., Baltimore.
(See Card in Attorneys' List.)

In general. Bagby's Annotated Code (1911) and Supplementary Volume (1914) embrace the Public General Laws of Maryland, including those of the 1914 session. By statute, the Code of 1911 has been made evidence; special reference to statutes in the following is therefore unnecessary.

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. No separate examination of a married woman is required. Defective acknowledgments cured. (See Conveyances.)

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. Speedy judgment Acts are in force in Baltimore City and in many of the Counties. (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. Re-enacted with amendments. (Acts 1908, Ch. 125.) This act constitutional by decision of Court of Appeals in case of Savings Bank vs. Weeks 110 Md. 78.

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.

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.

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 may be attached. There is a special provision for capital stock of a corporation. The certificate itself must be seized. Credits not due may be attached, but wages, hire or salary not due can not be attached, and 90 per cent of wages, hire, or salary due shall always be exempt. (Act 1908, Ch. 665.) 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 Art. 9.) All papers in attachment proceedings can now be amended, as in any other actions at law. (Act 1898, Ch. 44.) Under subject attachments see Chapter 343, page 925, Acts of 1924. If neither the Defendant nor Garnishee appear, condemnation may be had upon filing bond to be in force for period of six months, accounting from the return of the attachment.

Banks. The Act of 1910, as amended by the Acts of 1912 and 1914, made important changes in the banking laws of this State. The law now provides for the appointment of a Bank Commissioner with broad powers for the examination of all banking institutions in this State other than National Banks and an annual report thereon to the Governor. Whenever capital is reduced by impairment commissioner may require Bank to make such deficiency good within sixty days, and upon failure to do so may take possession of property and business of such institution and retain possession until affairs are finally liquidated. This also applies where the business is conducted in an unsafe or unauthorized manner. The requirements for the incorporation of such institutions are fully set forth in the act. This act also provides for the incorporation and supervision by the State of saving institutions and trust companies. Chattel loan companies are required to take out a license, pay a fee where the loan is $300 or more, and inspected by the State Banking Department.

Blue Sky Law. Embodied in the Acts of the Legislature of 1920, Chapter 552, adding an additional section to the Annotated Code, known as 32A, section 11, 12, 13 and 14.

The act provides that if it shall appear to the Attorney General of Maryland that the issuance, sale, promotion, negotiation, advertisement of the securities within the State of Maryland, by any person, partnership or corporation, or is employing or is about to employ any device, scheme or artifice to defraud, or for obtaining money or property by means of any false or fraudulent pretense, representation or promise, the said Attorney General may require said person, partnership or corporation to file with him a statement in writing under oath of all the facts concerning the same.

Section 14 provides that any person, partnership or corporation having been served with any order of the Attorney General, or having knowledge of the issuance of said order and while said order remains in effect, either as originally issued or as modified, or shall execute or carry on any scheme or device against which said order has been issued, or wilfully attempts to do so, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $10,000 or imprisoned not more than two years or be subject to both fine and imprisonment, in the discretion of the Court.

Collaterals. The conversion by any banker, broker, merchants, attorney, or agent of collaterals is made a misdemeanor. (See Code, Art. 27. Sec. 93.)

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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. 362, 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 contract of infants to be voidable and not void; and they are capable of ratification by infants on arrival at age of twenty-one. The contracts of infants for necessaries are binding upon them. The contract of a lunatic is voidable and not void. The statute provides that a married woman may engage in business, contract, sue, and be sued upon contracts and torts, as if unmarried. (Acts 1898, Ch. 457.) All gambling contracts and contracts made on Sunday are void.

Conveyances. No estate or title to any property lying within this State, for any period above seven years, shall pass or take effect unless the deed conveying the same shall be executed, acknowledged, and recorded. (See Code, 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 or have it acknowledged by the President or Vice-President without such appointment. Vendors' lien may be released in original deed or upon records where recorded. (Code Art. 66, Sec. 31). Conveyances defectively executed made valid by Acts 1908, Ch. 105 and Acts 1914, Ch. 259 and Ch. 421.

Corporations are organized under the authority of the General Incorporation Law, completely revised, Act 1908, Chap. 240. Liberal provisions are made for general incorporation: only exception (for municipal purposes) is in the constitution. All corporations (under the general law) must pay a bonus tax of one-eighth of 1 per cent upon its authorized capital stock and any increase. Corporations have perpetual succession, may carry on business anywhere, may issue bonds, and secure them by mortgage of all property including franchises. Foreign corporations must file list of resident shareholders, and amount held. The corporation's certificate must be filed and $25 paid; annual renewal fee of $1 is charged. All corporations, not paying a gross receipt tax (a long enumeration), shall pay an annual franchise tax on their capital employed in this State, of 50 cents per $1,000 but no less than $25. If capital is over $500,000 then one-fourth of 1 per cent on the excess to $5,000,000, etc. Section 99 of Article 81 of Code, amended by providing for annulment of Charter for non-payment of taxes. Domestic corporations may issue all kinds of preferred and common stock, and exchange same for stock or good will. Valuation in absence of fraud is conclusive. As to Stock certificates, see "Uniform Laws."

Law amended by Chapter 596, Acts of 1916.

Chapter 318, Acts of 1918, provides that all corporations who shall refuse or neglect to pay franchise tax or tax on capital stock for a period of two years, the charter is annulled and forfeited.

Any corporation chartered by this State, which for a period of ten days next preceding is without one resident agent, whose name and post office address is given in charter or filed with State Tax Commissioner, may be deemed a defendant in an attachment in the same manner as non-residence, unless said corporation shall have been incorporated under the laws of this State prior to June, 1916, and have at least one Director, who is a citizen of this State, actually residing therein.

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.

Deposition. 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.

Descent and Distribution of Property. As to descent, see Code 1904, Art. 46, and as to distribution, Code, 1904, Art. 93.

An attempt to abrogate the Rule in Shelley's case has been made by Ch. 144, Acts 1912.

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 by the 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.)' "The surviving husband or widow shall be barred of his or her right of dower in real or personal estate, unless within six months after the first grant of letters testamentary he or she shall file a written renunciation."

Chapter 223, page 721, Acts of 1924.

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.)

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 Horsey 35 Md. 439. Giving checks or drafts without provision for acceptance is prima facie evidence of intent to defraud, and is punishable as a crime unless such provision is made within ten days. 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 void.

Chapter 370, Acts of 1916, adds additional section to Article 27 of Bagby's Code and provides that if any person shall make, or cause to be made, either directly or indirectly, through any agency, whatsoever, any false statement as to his financial condition for the purpose of procuring the delivery of personal property, etc., shall be guilty of a misdemeanor and be fined not more than $1,000, or imprisonment for one year.

Chapter 371, of the Acts of 1916 adds new section 831 of Bagby's Code and provides that any vendor of stock of goods who shall knowingly and willingly make or deliver any statement of which any material portion is false, shall be guilty of a misdemeanor and upon conviction shall be fined $1,000, or imprisonment for one year.

Garnishments. (See Attachments.)

Holidays. Legal holidays in Maryland are: January 1st, February 22, March 25th, May 30th, July 4th, September 12, October 12th, December 25th, and when any of these days fall on Sunday the ensuing Monday is a legal holiday. Good Friday, Labor Day (first Monday in September), days of general and Congressional election, special days appointed by the Governor or President, as Thanksgiving, fasting days or for religious observance, or for general cessation of business

In Baltimore City, and Baltimore, Cecil, Harford and Montgomery counties and Cumberland, after twelve o'clock noon every Saturday.

Husband and Wife. (See Dower, Divorce, and Married Women.) In this State the husband is not liable for wife's ante-nuptial debts or contracts. Husband is liable for necessaries of wife. Acts 1898 Ch. 457, gives husband same interest in wife's estate as wife has in husband's estate. Married women are expressly 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. The wife's property is protected by the Constitution from the debts of the husband.

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. Since September 1st, 1914, judgments bear interest from the date of the verdict.

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.)

Liens. (See Judgments.) Mechanics' 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. Garages by Act 1918 given lien for storage and accessories. 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.

Section 53 B, Bagby's Code, amended by Chapter 355, Acts of 1916, entitled "Additional Contracts." Every note, sale, or contract for sale of goods and chattels wherein the title thereto, or lien thereon is reserved until the same be paid in whole or in part, shall be void as to third persons without notice until such note, sale, or contract be in writing signed by the vendee and be recorded in the Clerk's office of Baltimore City, or the counties, and such recording shall be sufficient to give actual, or constructive notice to third parties.

Limitations of Suits. Accounts and notes are barred after three years, sealed instruments after twelve years; judgments twelve years except against foreign corporations (no limitations). Act 1914, Ch. 846. A verbal promise or acknowledgment will revive a debt barred by the statute.

Married Women. Act of 1898, Chap. 457, Code Art. 45, 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. Married women may engage in business, contract, sue, and be sued upon contracts and for torts, as if unmarried. Married woman is alone liable for ante-nuptial debts and contracts. Husband is still liable for necessaries. Widow is entitled to dower in real estate, and one third of the personal estate if there are children, and if no children, one-half of the personal estate; husband has same rights in wife's property as wife has in husband's property. Where the wife is adjudged a lunatic upon inquisition, and the finding remains in force, husband may convey after acquired property by separate deed, as if unmarried.

Mortgages are executed, acknowledged, and recorded same as deeds, and are not valid against creditors unless recorded within six months. There must be an affidavit made by the mortgagee or his agent at any time before recording, that the consideration is true and bona fide, and, in the four Counties mentioned below, 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

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 convenanted to be paid in the mortgage, in Somerset, Montgomery, Frederick, and Dorchester counties. No tax in Baltimore City and other counties. (Code Art. 81, Ch. 187.)

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 Art. 13, as follows: "Section 104: 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, May 30, 1st Monday in September, 12th day of September, and the 12th day of October, 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 legal half holidays. Monday is treated as Sunday when immediately preceded by one of the holidays aforesaid. 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.

Bagby's Code amended by Chapter 355, Acts of 1916. Notes wherein reservation of title is embodied must be recorded in the Clerk's office of Baltimore City, or in the counties.

Power of Attorney. Every power of attorney authorizing an agent ot 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.)

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.

Sales & Notices. Act 1910, Ch. 346, provides a Uniform Sales Act.

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. Beginning with 1915, the State tax is thirty-two and one-third cents, beside the County tax. The County tax on Banks located and in business anywhere in Maryland is uniformly 1 per cent. The property of religious, charitable, benevolent, and educational institutions, and cemetery companies is exempt from taxation. On timely application exemption may be had for manufacturer's tools and machinery in actual use from Municipal taxation in Baltimore City and in some of the Counties, and beginning with 1915, from State taxation. 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 twelve calendar months from date, and in default of redemption, title to property vests 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.

Trust Companies. Laws of 1920, Chapter 268, Section 46, subsection ninth, provides that trust companies, by its directors, duly authorized officers or agents, shall have the powers as shall be usual in the carrying on of the banking business, by buying, discounting, negotiating promissory notes, bonds, drafts, bills of exchange, foreign and domestic, and other evidences of indebtedness.

Laws of 1920, Chapter 64. Trust companies tax one per cent, same as state banks.

"Uniform State Laws" intended for adoption by all the States and adopted by Maryland: (1) Negotiable Instruments, (2) Bills of Lading, (3) Sales, (4) Warehouse Receipts, (5) Stock Transfer, (6) Probate of Foreign Wills, (7) Uniform Bad Check Act, provides that drawers shall be given ten days notice to make good check, before prosecution.

Certificates of capital stock, bills of lading, and warehouse receipts, roughly speaking, (1) are negotiable, (2) represent the property certified to.

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. Every will or other testamentary instrument executed without this State in the mode prescribed by law, either of the place where executed or of the testator's domicile, or according to the forms required by the law of this State shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the law of this State, provided, said last will and testament is in writing and subscribed by the testator; 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 last will or testamentary instrument 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 lex domicilii, unless the testator shall expressly declare a contrary intention in said will or testamentary instrument. Code Art. 93, Ch. 334. No will, testament, codicil, or other testamentary paper shall be subject to caveat or other objection to its validity after the expiration of three years from its probate. (Acts 1894, Ch. 405.) When a person is unheard of for above seven years, and supposed to be dead, the orphans' court, under the provisions of Act of 1908, Ch. 125, may grant letters testamentary or of administration as the case may be.

Workmen's Compensation. By the Act of 1914, Chapter 800, provision is made for the insurance by employers of their employees engaged in extra-hazardous occupations, to provide for compensation for injuries and death. This Act is intended to supersede within its scope recovery for injuries through negligence as a tort, and to do away with such defenses as "assumed risk," "fellow servant" and, to some extent, "contributory negligence." The extra-hazardous employments are enumerated at length, and the extent of compensation set out. Employers and employees, may by filing agreement, classify their occupation as extra-hazardous, although not so enumerated in this Act. Article 101, Amended by Chapter 86, Acts of 1916, so as to extend benefits to alien non-resident defendants upon certain terms.

SYNOPSIS OF

THE LAWS OF MASSACHUSETTS

RELATING TO

BANKING AND COMMERCIAL USAGES

Accounts. Ex parte affidavit on claims and accounts is of no value. They must be established by evidence produced in court after suit brought either by testimony or deposition.

Acknowledgments and Deeds. Acknowledgments may be made before any justice of the peace, notary public or special commissioner 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. Official taking acknowledgment should state date of expiration of his commission.

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, homestead and other interests must be explicitly stated in deed, wife's joining in deed merely, being insufficient. Husband and wife may make conveyances of real estate to each other except by way of mortgage, as if unmarried, but no such conveyance shall have any effect, either in passing title or otherwise, until the deed describing the property to be transferred is duly acknowledged and recorded in the registry of deeds for the district where the land lies. Any interest in real estate may be transferred by a person to himself jointly with another person or persons in the same manner in which it might be transferred by him to another person. No interest in land except an estate at will can be created except by instrument in writing or by operation of law.

Actions. There are three classes of actions: contract, tort, and replevin. Actions at law are begun by writs issued in blank form by the clerks of the several courts. No declaration need be inserted in the writ, except in cases of arrest on mesne process or of an attachment of a vessel. Suits in equity are begun by filing a bill upon which a subpœna is issued by the clerk of the court. Actions begun by trustee process must be brought in the county in which the trustee or one of them resides or has his usual place of business.

Administration of Estates. Administration or probate is to be taken out in county where deceased last resided. 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 in this State 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 within three months, and publish notice of his appointment. Notice of a debt, and demand for its payment should be given to an executor or administrator within six months after his appointment and the debt should be paid after six months and within one year of the appointment. No suit can be brought by a creditor against an executor or administrator within six months 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 one year from time of his giving bond, unless he has received new assets after the expiration of the one year, or unless further time is allowed by court. A creditor whose claim does not accrue within the one year 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 commissioner will be appointed to receive proof of claims, or the Court may receive and act upon the claims. Claims for funeral 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.

Arrest. In an action of contract, the defendant unless she is a woman, may be arrested on mesne process provided the plaintiff, and except in actions on negotiable instruments. the original party to the

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

contract or his executors or administrators makes affidavit and satisfactorily proves to the court to which the writ is returnable 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 for alimony, or one issued in an action of tort, 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 on 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 by creditors who assent thereto, except by proceedings in bankruptcy begun within four 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.

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 then $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 cannot be attached except by bill in equity. Attachment of shares of stock is not valid against a bona fide transfer although not recorded in book of corporation. Debtor may dissolve attachment by furnishing bond with sureties to pay judgment obtained or value of property attached determined by appraisement. 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 to take the poor debtor's oath and be examined as to his property after notice to creditor. 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. The banking business is extensively regulated by statute. In general, savings banks, co-operative banks, trust companies, or other corporations or persons doing banking business in Massachusetts are subject to supervision of commissioner of banks. (General Laws, ch 167, ch. 168, ch, 169, ch. 170, ch. 172). No foreign banking association or corporation shall transact business in Massachusetts until it has received certificate from board of bank incorporation. There are very few existing state banks, and Rev. Laws, ch. 115, in view of St. 1918 ch. 12, was not re-enacted in the consolidation of statutes in General Laws, effective January 1, 1921. For extensive provisions relative to Savings Banks, see Gen. Laws, ch. 168.

The trust company is the prevailing form of banking institution. Fifteen or more persons associating by written agreement may, upon compliance with statute, become a trust company. Agreement of association must set forth corporate name, purpose, city or town in Massachusetts where business is to be transacted, amount of capital stock and number of shares. Notice of intention to form trust company shall be given to board of bank incorporation, and such notice must be published. Unless the board issues a certificate that public convenience and advantage will be promoted by establishment of such a trust company, no further proceedings shall be had, but after one year the application may be renewed. After the first meeting of the subscribers the president and majority of board of directors execute in duplicate articles setting forth copy of agreement of association, names of subscribers and names and residences of officers, date of first meeting; one of the certificates is submitted to bank commissioner, the other together with records of proposed corporation to commissioner of corporations and taxation. Approval by commissioner must be endorsed if he finds that legal requirements, including certificate of convenience, have been met. The articles are filed with the secretary of state, with filing fee of one twentieth of 1 per cent of capital stock, and certificate of incorporation issues. Before business can be commenced a certificate authorizing such must be obtained from board of bank incorporation. (Gen. Laws, ch. 172, section 11). A director of trust company must hold at least ten shares of unpledged stock, and majority of directors must be citizens of and resident in Massachusetts, and not over one-third of the directors shall be directors in any other such corporation. Except in smaller municipalities capital stock of trust company must be not less than $200,000; shares par value of $100 each. Entire capital stock must be paid in in cash. Stockholders of trust company shall be personally liable, equally and ratably and not one for another, to amount of their stock therein at par in addition to amount invested in such shares, for all contracts, debts and engagements of the corporation. In case of impaired capital, bank commissioner has authority to act. Commissioner of banks has extensive power to require returns and to supervise and examine. Savings departments may be established. The kinds of business which may be done are prescribed by statute with considerable detail.

Bills and Notes. The law of negotiable instruments is governed by the Negotiable Instruments Law, as amended, where applicable; in other cases by the law merchant. A person becoming a party to a non-negotiable promissiory note payable on tme, by signature in blank on the back thereof, is entitled to notice of non-payment same as an indorser. A depositary of funds, subject to withdrawal by check or demand draft may pay a check or demand draft drawn on it by a depositor having funds on deposit to pay same, notwithstanding his death, upon presentation within ten days after its date.

Protest of bill, note or order duly certified by notary public under his hand and official seal is prima facie evidence of facts, stated in such protest and of giving notice to drawer or indorser.

There are various statutory provisions bearing upon the validity of the notes of municipalities of this Commonwealth. Where a negotiable instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand presentment must be made within a reasonable time after its issue.

An accommodation party to a negotiable instrument is liable thereon to a holder in due course notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. When the day, or the last day, for the performance of any act, including the making of any payment or tender of payment, authorized or required by statute or by contract falls on Sunday or on a legal holiday, the act may be performed on the next succeeding secular or business day, unless it is specifically authorized or required to be performed on Sunday or on a legal holiday.

Every negotiable instrument is payable at the time fixed therein without grace, except that three days of grace shall be allowed upon a draft or bill of exchange made payable within Massachusetts at sight unless there is an express stipulation to the contrary. Where the day, of maturity falls upon Saturday, Sunday, or a holiday, instrument is payable on next succeeding business day which is not a Saturday. Instruments payable on demand may, at option of holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday; provided however that no person receiving any check, draft, bill of exchange or promissory note payable on demand, shall be charged with any neglect or omission of duty or incur any liability, for not presenting for payment or acceptance or collection such check, draft, bill of exchange, or promissory note on a Saturday; provided also that the same shall be duly presented for payment, acceptance, or collection on the next succeeding business day.

Under certain circumstances the original named payee of order paper may be a holder in due course.

No bank shall be liable to a depositor, or to the drawer of a bill of exchange upon the bank, for an amount charged to or collected from him on account of payment by such bank of a negotiable instrument upon which the signature of any party is forged, or which is made, drawn, accepted or indorsed without authority, or which is materially altered or the amount of which is raised; unless within one year after return of such negotiable instrument to such depositor or drawer, he shall notify the bank in writing that, as the case may be, the instrument was made, drawn accepted or indorsed without authority, that signature of a party to instrument is forged, or that instrument has been materially altered, or that the amount has been raised.

Bills of Lading. The so-called Uniform Bills of Lading Act is in force, and has been held constitutional by the Supreme Judicial Court. A bill in which it is stated that the goods are consigned or destined to a specified person is a non-negotiable or straight bill. A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is a negotiable or order bill. A non-negotiable bill cannot be negotiated, and indorsement of such a bill gives transferee no additional right. A negotiable bill may be negotiated by indorsement of person to whose order goods are deliverable by tenor of bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. A negotiable bill may be negotiated by any person in possession of same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at time of negotiation bill is in such form that it may be negotiated by delivery. Indorsement of bill does not make indorser liable for any failure on part of carrier or previous indorsers of the bill to fulfil their respective obligations. Any provision in an order bill that it is non-negotiable shall be void.

Bills of Sale. A bill of sale of personal property intended for security must be recorded, the recording provisions as to mortgages of personal property being applicable. See Chattel Mortgages.

Blue Sky Law. Acts of 1921, ch. 499, approved May 27, 1921, entitled Promotion and Sale of Securities. Act applies to no contracts valid and effective before act became effective. Certain securities are exempted. Act defines at length what is meant by security and sale. Persons dealing in securities within operation of act must be registered and information specified must be furnished commission. Certain classes of sales and certain securities are exempted from operation of Act. Annual fee for broker, $50, for salesman, $2. Act does not limit any statutory or common law right of any person to sue civilly or right of state to punish for violation of any law. Commission has power of inquiry, of summoning witnesses and of suspending certain sales. Act has immunity provisions. Violation of act punishable by fine of not more than $5,000 or imprisonment not more than two and one-half years or both. Scope of law extended by Acts 1924, ch. 487, which should be consulted.

Chattel Mortgages. Chattel mortgages must be recorded in the records of the city of 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 and record subsequent to time limited is void. If mortgage is given by non-resident mortgagor, record must be made in city or town where property then is. If record in two places is required, and mortgage is recorded in one place within fifteen days, it may be recorded in other place within ten days after date of first record.

Conditional Sales. If a contract for sale of personal property is made on condition that title shall not pass until purchase money has been fully paid, and vendor upon default takes possession of property, the vendee may within fifteen days after such taking redeem the property so taken by paying to vendor the full amount then unpaid with interest and all lawful charges and expenses due to vendor.

There are special statutory provisions affecting conditional sales of furniture or other household effects.

By statute no conditional sale of heating apparatus, plumbing goods, ranges, or other articles of personal property which are afterwards wrought into or attached to real estate, whether fixtures at common law or not, shall be valid against any mortgagee, purchaser or grantee of such real estate unless not later than ten days after delivery thereon of such personal property a notice in form prescribed by statute is recorded in registry of deeds of district where land lies. Statute also applies to registered land.

In the ordinary case, contracts of conditional sale need not be recorded. Selling or concealing personal property held by vendee under a written conditional contract of sale, before performance of condition and with intent to defraud, is a criminal offense.

Corporations. By special act of 1903, chapter 437, the law of business corporations was revised and as amended, and now codified in General Laws, 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, cooperative 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, or crematory companies, or any corporation which now have or may hereafter have the right to take or condemn land, or to exercise franchise in public ways, provided that corporations, formed for purpose of dealing in real estate shall state the term of the duration of the corporation, such term not to exceed fifty years.

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, if having shares only with par value. There is no maximum limit. Business corporations may create shares of stock with or without par value, and corporations with stock with par value may, by appropriate proceedings, change such stock to stock without par value. 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-twentieth of 1 per cent of total amount of authorized capital stock with par value, and five cents per share for all authorized shares without par value, but in no case less than $50, 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, but not for notes. 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, shares without par value being taken as of $100 in value, to file a written statement under oath by an auditor. It is also required to make an annual return to the tax commissioner.

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, rail-

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

way 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, articles or certificate of incorporation, by-laws, and a certificate setting forth its name, location of principal office, names and addresses of its officers, date of its annual meeting, amount of its capital stock 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. Such corporations are required to file annual statements with the commissioner of corporations showing their condition.

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 have original jurisdiction, exclusive of the Superior Court, of actions of contract, tort or replevin, in which the debt or damages demanded or the value of the property alleged to be detained does not exceed $100 and have original and concurrent jurisdiction with the Superior Court of actions of contract, tort or replevin in which the debt or damages demanded or the value of the property alleged to be detained is more than $100 and does not exceed $1,000. The supreme judicial court has original jurisdiction in all equity matters and may on appeal hear all matters determined by the probate court, and determine questions arising under wills. 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 county of Suffolk. The Land Court has exclusive original jurisdiction for registering titles to real estate under the Torrens system.

The Probate Courts have jurisdiction over administration of estates of deceased persons, matters of adoption, guardianship, conservatorship, trusts under wills and written instruments, petitions for separate support, and of partition of land. There is a Probate Court and Registry of Probate in each county.

Equity jurisdiction is lodged in the Superior Court and in Supreme Judicial Court. By statute Probate Courts have jurisdiction in equity in certain special matters.

Depositions. Taking of such is governed by statute and rules of courts. The commission issued to take depositions contains full instructions to magistrate how to proceed.

Descent and Distribution of Property of Decedents. After deducting widow's allowance and allowances for minor children, and payment of debts and expenses of administration, the remaining personal and real estate is distributed as follows: If deceased leaves no issue, surviving husband or widow shall take $5,000 and one-half of remaining real and personal property. If deceased leaves issue, surviving husband or widow shall take one-third of remaining real and personal property. If deceased leaves no kindred, surviving husband or widow shall take whole of remaining real and personal property.

A husband on death of wife shall hold for his life one-third of all land owned by her at any time during coverture, estate known as tenancy by curtesy. Wife is entitled to dower at common law. But in order to be entitled to such curtesy or dower election and claim therefor must be filed in registry of probate with six months of approval of bond of executor or administrator, and such election is a waiver of the interests on real property above mentioned. Probate Court assigns dower or curtesy. Rights of curtesy which exist on February 1, 1919, may be claimed as above provided, but in such case husband shall take no other interest in real or personal property of wife, and except as above preserved curtesy at common law is abolished.

Subject to all the above, the rest and residue of intestate property is distributed as follows: 1. In equal shares to children and issue of any deceased child by right of representation; if there is no surviving child, then to the other lineal descendants if all are in same degree of kindred, otherwise by right of representation. 2. If intestate leaves no issue, then in equal shares to father and mother. 3. If no issue nor mother, then to father. 4. If no issue or father, then to mother. 5. If no issue, father or mother, then to brothers and sisters and to issue of deceased brothers or sisters by right of representation; if no surviving brother or sister, then to issue of such equally if all in same degree of kindred to intestate, otherwise by right of representation. 6. If he leaves no issue, no father, mother, brother or sister or issue of deceased brother or sister, then to next of kin in equal degree, but if there are two or more collateral kindred in equal degree claiming through different ancestors, those claiming through nearest ancestor are preferred. If intestate leaves no kindred, husband or widow, estate escheats to commonwealth.

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. Original executions in all courts are returnable within sixty days, alias executions five years.

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.

Factor's Act. A factor or other agent intrusted with possession of merchandise or of bill of lading consigning merchandise to him with authority to sell the same shall be deemed the true owner of such merchandise, so far as to give validity to any bona fide contract of sale made by him. Bona fide consignees from shippers in lawful possession have liens for advances or securities to shipper. Bona fide pledges from consignees or factors are also protected.

Frauds, Statute of. No action can be brought to charge an executor or administrator on a special promise, to charge any person upon a special promise to answer for debt, default or misdoing of another, upon an agreement made on consideration of marriage, upon a contract for sale of any interest in land, upon an agreement not to be performed within a year, to charge a discharged debtor, unless the promise, contract or agreement or some memorandum thereof is signed by the party or by his authorized agent. No agreement to make a will, or to devise or to give a legacy is binding unless in writing. No contract of sale of personal property of $500 or over is actionable unless there is part payment, acceptance and receipt of part of the goods, or some memorandum in writing signed by party to be charged or his agent.

Insolvency. There is an insolvent law, but it is superseded by the National Bankruptcy Act of 1898. As to insolvent estates of deceased persons, see Administration of Estates.

Gifts between Husband and Wife. Gifts of personal property husband and wife shall be valid to same extent as if they were sole.

Holidays. January 1st, New Year's Day; February 22nd, Washington's Birthday; April 19th, Patriot's Day; May 30th, Decoration Day; July 4th, Independence Day; First Monday in September, Labor Day; October 12th, Columbus Day; Thanksgiving Day; December 25, Christmas Day.

Interest. Legal rate is 6 per cent. There are no usury laws, but there are certain statutory provisions relative to interest upon small loans up to $1,000. See General Laws ch. 140, ss. 86–114.

Judgments. A judgment or decree of a court of record of the United States or of any state thereof shall be presumed to be paid and satisfied at the expiration of twenty years after it was rendered.

Limitation of Suits. Contract express or implied and not under seal and not otherwise limited, 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. Absence from the State prevents the running of the statute of limitations as to a defendant until he comes into the State. If the person entitled to bring an action is a minor or is insane or imprisoned when the right to bring such action first accrues, such action may be commenced within the time hereinbefore limited after the disability is removed. The statute does not run against those residing out of the State. See also Administration of Estates.

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.

Mechanic's Liens. Subject covered by statute.

Mortgages of Real Estate. Power of sale mortgage is universally used. Foreclosure is regulated by statute, requiring publication prior to sale, and sale bars redemption. Mortgages may also be foreclosed by entry and peaceable possession for three years.

Sales of Personal Property. Uniform Sales Act adopted in 1908, is now Gen. Laws ch. 106. There is a Bills of Lading statute, (Gen. Laws ch. 108), and Gen. Laws ch. 105 relates to warehouse receipts. As to sales of $500 or over, see Frauds, Statute of. Sales of merchandise in bulk are fraudulent unless the provisions of Gen. Laws ch. 106, sec. 1, are complied with. Delivery of a bill of sale is not constructive delivery of the goods. Delivery of possession of goods sold is essential as to third persons without notice who purchase same goods for value, or as to attaching creditors without notice. Vendor's retention of possession after sale is prima facie evidence of fraud. As to conditional sales, see that topic supra.

Statutes. General revision and consolidation of statutes, effective January 1, 1921 under title of General Laws.

Stock Transfer. This subject is covered by Stock Transfer Act as codified in General Laws.

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. But in lower courts venue depends on residence or place of business of defendant. Where all parties are non-resident, action may be brought in any county. Attachment of property owned by defendants residing out of State may be made sufficient to give jurisdiction for a special judgment 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 mense process and held to bail. A non-resident plaintiff is usually required to furnish indorser for costs. See also Actions, supra.

Taxes assessed upon land shall with all incidental charges and fees be a lien thereon from April 1st in the year of assessment. Such lien shall terminate at the expiration of two years from October 1st in said year, if the estate has in the meantime been alienated and the instrument alienating the same has been recorded, otherwise it shall continue until a recorded alienation thereof; but if while such lien is in force a tax sale or taking has been made and the deed or instrument of taking has been duly recorded within thirty days, but the sale or taking is invalid by reason of any error or irregularity in the proceedings subsequent to the assessment, the lien shall continue for ninety days after a release, notice or disclaimer, has been duly recorded, or for ninety days after the sale or taking has been finally adjudged invalid by a court of competent jurisdiction. There shall be no lien for taxes reassessed if the property is alienated before the reassessment. Said taxes if unpaid for fourteen days after demand therefor, may, with said charges and fees, be levied by sale of the real estate if the lien thereon has not terminated.

The matter of enforcing the payment or collection of taxes is one concerning which there is a considerable body of statute law which cannot be briefly summarized.

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. See also Actions, supra.

Warehouseman and Warehouse Receipts. The Warehouse Receipts Act as codified into Gen. Laws is in force.

Wills. Every person of full age and sound mind including married women may make a will. Will must be signed by testator, or by some person in his behalf, by his express direction, and be attested and subscribed by three or more competent witnesses in his presence. A will executed in mode prescribed by the law either of place where will is executed or of place of testator's domicil, shall be deemed legally executed and shall be of same force and effect as if executed in mode prescribed by laws of Massachusetts provided will is in writing and subscribed by testator. As to waiver of provisions of will by husband or wife, see Descent and Distribution, supra, also General Laws ch. 190, section 15.

SYNOPSIS OF

THE LAWS OF MICHIGAN

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by HENRY WUNSCH and EDWARD F. WUNSCH, 706-710 Dime Bank Bldg., Attorneys at Law, Detroit, Michigan.

(See Card in Attorneys' List.)

Acknowledgments of real estate instruments may be before one of the following officers: 1. Within this State: Any judge, clerk or commissioner of any court of record, notary public, justice of the peace or master in chancery. The official should certify that "On this day before me personally appeared....., to me known to be the person or persons who executed the foregoing instrument and acknowledged that he (or they) executed the same as his (or their) free act and deed." Notary's certificate must show date of expiration commission. Such instruments must have two subscribing witnesses. 2. In any other state, territory, or district of the United States: Same officials as described above or any officer authorized by the laws of such state, territory, or district, or before a commissioner appointed by the Governor of this State for that purpose. Any such instrument may be executed according to the laws of any

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

such other state or territory. If officer has no seal, certificate of the Clerk of the county or district, or of the Secretary of State within which taken shall be attached. 3. In any foreign country: notary public, or minister plenipotentiary, minister extraordinary, minister resident, charge d'affairs, or commissioner or consul of the United States, appointed to reside therein.

Actions. Common law forms of pleadings are used, but in some respects modified by statute. Non-resident plaintiffs must give security for costs.

Administration of Estates: In probate court of each county. Claims are passed on by judge of probate or commissioners appointed for each estate; within such time allowed by the court, not exceeding in first instance one year nor less than four months; may be extended not to exceed two years from date; the court may revive commission any time before estate is closed and allow further time three months to examine any claim; an appeal to circuit courts from allowance or disallowance of any claim. All claims barred, not presented before administration is closed:—

Administration of intestate estates is granted: 1st, to surviving husband or wife, or kin or grantee, or such one of them as judge may appoint, or as they may request. 2nd, to one or more of the principal creditors. 3rd, to such other person as the judge may think proper. Non-resident administrators and executors appointed in other states, territories, or foreign countries cannot sue as such in this State without procuring administration in this State.

Affidavits may be taken by any judge, master in chancery, clerk of court, justice of the peace, police magistrate, notary public, or circuit court commissioner. Any oath authorized, or required to be made, without the State for use in judicial proceedings here, must be authenticated by judge of a court having a seal, and the genuineness of such judge's signature, existence of the court, and that such judge is a member thereof, certified by the clerk of the court under the seal thereof. If in any other state or territory, may be taken before a commissioner appointed by the governor of this State, or any notary public or justice of the peace authorized by the laws of any such state or territory to administer oaths therein.

In actions at law affidavits of amount due on open and stated accounts, attached to and served with process as commencement of suit make a prima facie case, unless denied by the defendant's affidavit filed and served with plea.

Aliens. May inherit or purchase and hold and convey personal and real estate.

Arbitration. Competent parties to any controversy which is or might be the subject of an action at law or suit in equity, may agree to arbitrate, and judgment of any circuit court rendered upon the award. No arbitration of claim of any person to any estate in fee or for life in real estate.

Arrest. By writ of capias in personal actions in tort and in actions for money collected by any public officer; or upon promise to marry; also by warrant allowed by any justice of the peace or judge of a court of record, under the fraudulent debtor's act, when the creditor has commenced suit or obtained judgment and the debtor has disposed of or concealed, or is about to dispose of or conceal property liable to execution or the debt was fraudulently contracted.

Assignments for the benefit of creditors are void unless made without preferences; must comprise all of assignor's property not exempt from execution. The circuit court in chancery has supervisory jurisdiction of such assignments.

Attachments. Writs may be issued from justice and circuit courts on affidavit showing: debt due on express or implied contract, and either that the debtor has absconded or is about to abscond from the State or has assigned or disposed of or is about to assign and dispose of his property with intent to defraud his creditors; or is a non-resident of the state, or a foreign corporation. May issue from the circuit court for debt not due but to become due, upon satisfactory showing to the circuit judge, but in such cases judgment cannot be taken until debt is due. May issue in actions of tort against non-residents in certain cases.

Banks. Incorporation of: Any number of persons not less than five may associate to establish for a period not to exceed thirty years, commercial banks, savings banks, and banks having for both classes. Capital required is graded—$20,000 to $250,000, according to population of cities or villages where conducted. Upon filing articles of association, commissioner of banking department and Secretary of State issue certificates of organization; board of directors chosen by the stockholders. No more than the legal rate of interest in advance shall be received; file correct list of stockholders with commissioner of banking, and county clerk and report four times a year to be published in newspaper where bank is conducted. Commercial loans, not to exceed 50 per cent of the capital, on real estate securities, by two-thirds vote of directors, except to secure debts due the bank. Savings deposits payable as directors prescribe; commercial deposits payable on demand. Banks combining commercial and savings deposits cannot issue post notes nor any bill or note or certificate as money. Savings depositors preferred in distribution of savings department funds. Stockholders individually liable equally and ratably and not one for another to the amount of the par value of stock, for the benefit of depositors. All transfers of property, and payments of money after actual or contemplated insolvency to prevent legal application of assets null and void; total liabilities of any borrower shall not exceed one-tenth part of the whole capital and surplus, may be increased to one-fifth by two-thirds vote of directors; not to issue certificates of deposit for borrowed money nor make partial payments on such certificates; not liable to depositors for payment of a forged or raised check unless notified within three months after return of voucher.

All shares of bank stock shall be assessed against their owners in the township, village, or city, where the bank is located, taxes not paid by stockholders, bank's duty to pay.

Trust deposits and security companies may be incorporated under the general laws of the State applicable thereto. Seven or more persons may associate to establish—capital graded from $100,000 to $5,000,000 according to population of cities where conducted; deposit with the state treasurer 50 per cent of the capital stock in bonds or real estate mortgages worth double the amount secured; powers such as are customary for trust companies. They cannot do any banking business.

Blue Sky Law. Michigan in 1915 passed an act, commonly known as the Blue Sky Law, regulating the selling of and dealing in stocks, bonds and other securities with certain exceptions of corporations, associations, partnerships and individuals, so as to prevent fraud in such dealings, and creating a Commission of three to administer the provision of the law. Under this law application must be made to the Michigan Securities Commission and the approval of the Commission secured before such securities may be sold. Certain penalties are imposed under the law for non-compliance with its provision. The Michigan Supreme Court has declared the act to be Constitutional and valid.

Collaterals. Stocks, bonds or other personal property pledged as collateral security for payment of money or the performance of any obligation, upon default may be sold at public (or private sale if so authorized by the contract) to satisfy the debt; but before public sale, ten days notice must be given and served on pledger or legal representative personally or by mail; such sale must be between nine o'clock forenoon and sunset, at a public place in the township, city, or village where held.

Conditional Sales. Are valid between the parties: if consignee or purchaser, on condition title is retained by seller, is authorized by the contract to sell, all such sales are valid. The consignee or purchaser cannot make valid sales against the legal owner without the authority of consignor or legal owner. (See Liens.) (See Frauds.)

Conveyances. Any person of full age or otherwise capable may convey by deed any interest in lands, whether in actual possession or not. All grants and devises of lands to two or more persons create estates in common; no joint tenancy, unless expressly so declared, except such as are made in trust or to executors, and except such as are made to husband and wife, who take as "tenants by entirety." The words "conveys and warrants" in the deed describing the premises and specifying the consideration, dated, duly signed and acknowledged by grantor are sufficient to convey title in fee simple and to warrant, that grantor and his heirs and personal representatives is seized of the premises, has good right to convey same, guarantees quiet possession thereof, and that he will warrant and defend the title against all lawful claims. The words "conveys and quit claims" duly signed, sealed and acknowledged by grantor are sufficient to convey grantor's interest. The words "mortgages and warrants" and duly described premises, specifying "to secure the payment" and reciting the sum for which mortgage is given and the notes and other evidences of debt secured thereby, mortgage being dated, signed, sealed and acknowledged by grantor, is sufficient and warrants perfect title in the grantor and against all previous incumbrances; omitting the word "warrants" sufficient, but without any warranty. Dower and homestead rights not waived unless wife joins in the mortgage. No homestead right will avail against the mortgagee if there is no wife, nor if wife joins in the mortgage. Married women of full age joining with husbands in any deed, mortgage, power of attorney or other writing, shall be bound in respect to their own title.

Corporations. Banks, mining, manufacturing, insurance—fire, marine, accident, burglary—printing and publishing, manufacturing and mercantile, or a union of the two, partnership associations, real estate associations, real estate, railroads, street railways, co-operative benefit associations, co-operative savings associations, and religious societies, are respectively organized under State general laws; required to file with the secretary of state, articles of association.

Business Corporations. Three or more persons may organize. One half of capital must be actually subscribed and at least 10 per cent either in money or property must be paid in; if in property same must be for the purpose of the business, and described and its value specified in the articles. Stockholders vote in person or by proxy. Each share has as many votes for directors as directory numbers, and the aggregate vote may be distributed for one or more of directors. May issue preferred and common stock of the par value of $10 or $100, and also non-par common stock. Preferred entitled to dividend not to exceed 8 per cent quarterly, semi-annually or annually and if not paid be accumulated, and paid, before any dividend paid on the common. Articles of association to be recorded in the county clerk's office of county where operations carried on, and office of the secretary of state. May hold real estate for the purpose of the corporation and such as acquired as security or in payment of debts, managed by not less than three directors chosen by the stockholders annually hold office until successors are chosen; make duplicate reports in January or February annually for the fiscal year last ending, of the financial condition and property of the corporation to secretary of state, stockholders are liable for labor debts; they make all by-laws for corporation. Foreign corporations organized under the laws of any other state of the United States or of any foreign country, unlawful to carry on business in this state until certificate of authority procured from secretary of State; not capable of making valid contracts in this state until authorized to carry on business; unlawful for any person to act as agent of until authorized to do business. Sales of goods or merchandise by the right of inter-state commerce not affected by state laws.

Courts. Terms of Jurisdiction. Circuit courts, holding two or more terms annually in each county, have original jurisdiction in all cases of law and equity wherein the amount in controversy is $100 and upwards; and have appellate jurisdiction from justice of the peace probate courts, and other inferior tribunals. Justice courts in each county have jurisdiction of cases at law involving from $100 to $500. In Grand Rapids is a "Superior Court" for civil cases, limited to parties resident of the city. Probate courts in each county have jurisdiction of estates of deceased persons and testamentary trusts Supreme court has final appellate jurisdiction from circuit, municipal and recorders' courts.

Days of Grace. Abolished.

Depositions. Testimony of any witness without the State of more than fifty miles from the court may be taken de bene esse, before any judge of any state or of the United States, or of any foreign country, or before any circuit court commissioner in this or any other state, or of the United States, or any commissioner of this State, any consul or consular officer, justice of the peace officer, or notary public authorized to administer oaths in the state or county where taken and not interested as attorney or counsel or in the event of the cause; reasonable notice given in writing by party or his attorney proposing to take to opposite party or his attorney of record, stating names of witnesses, time and place of taking and official before whom to be taken. Commissions to take depositions of any witnesses may be issued by circuit court wherein the suit is pending or by the judge or register thereof, or by a justice of the peace in a suit before him on written interrogatives. Fees for taking, certifying, sealing and forwarding $2; for each 100 words in deposition ten cents and copies three cents. Each party pays for his own examination or cross examination in the first instance.

Descent. Real estate and personal property of intestate after payment of debts and administration expenses and allowances, as follows:

Real Property. One-third to widow, remaining two-thirds to his issue; if no widow the whole to his issue to share equally if of same degree of kindred to intestate, otherwise by representation; if no issue, husband or widow to the father and mother in equal shares, if only one living to the survivor alone. If surviving husband or widow and no issue, one-half to such survivor, remainder to father and mother or their survivor. If no issue or parents, husbands or widow, equally to brothers and sisters and the children of deceased brothers and sisters; if none such relatives, to next of his kin in equal degree through nearest ancestor; if any unmarried child dies under age, his or her inheritance from any parent, to other surviving children of same parent and their issue by representation. If husband or wife survive and no issue, parents, brothers or sisters, or their children to husband or wife, and if no foregoing relatives whomsoever estate escheats to State. Illegitimates heir to mother; dying intestate estate descends to mother or her relatives if she be dead; become legitimate by parents, intermarriage or father's written acknowlment. The foregoing provisions for the widow are in lieu of dower and homestead right unless one year after administration granted she applies for assignment of dower and homestead in which case her interest in deceased husband's lands is limited to the dower and homestead right and the residue shall descend as above provided for that portion not taken by her.

Personal Estate. Residue — one-third to widow, two-thirds to children or issue by representation; one child; one half to child and one-half to widow; no widow or child, to all lineal descendants equally If widow and no children or issue, to widow, not exceeding $3,000; estate excess of that, one-half excess to widow, other half to surviving parents, and if none such to brothers or sisters; and none such, all such excess to widow. Married women intestate, one-third to husband, two-thirds to her children or their issue by representation, only one child or issue of deceased child; to husband and such child equally; if no child or issue of deceased child, one-half to husband and other half to surviving parents, and if none, to brothers or sisters or issue of them and if none, all to husband. In any other case same as for real property. Estates by curtesy abolished.

Dower. Wife entitled to use of one-third part of all lands owned by her husband as estate of inheritance any time during marriage. No dower as against mortgages for purchase price, or mortgages made

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

before marriage, except in surplus. Must exercise option to take dower in lieu of rights under will or statute within one year after administration; residing in this State and eighteen years of age and upwards may bar by joining in husband's conveyances and mortgages or by deed alone to one who has husband's title, intent to bar being expressed; or by jointure secured as bar.

Execution. May issue to any county at once, unless stayed after judgment in circuit court, in justice courts, expiration of five days; not liens on real estate or personal property until levy by proper officer. Real estate is sold without appraisement to the highest bidder, except homestead, to determine excess of value above $1,500 redemption claim. Defendant or his heirs or assigns may redeem within twelve months, his judgment creditors and others having valid liens within fifteen months from date of sale. Execution against the body may be issued on all judgments in actions of tort. Personal property levied on, after setting off exemptions, may be sold on six days' notice at public sale, to highest bidder to a sufficient amount to satisfy the debt and costs; no redemption after such sales. Executions from justice courts do not run against real estate.

Exemptions. Homestead—selected by the owner and occupied by him; not exceeding forty acres of land and dwelling thereon; or one lot with dwelling thereon within any recorded town plat or city or village not exceeding in value $1,500. Same cannot be alienated or incumbered without consent of wife or sold on any execution or any other final process from any court, unless appraised to exceed the value of $1,500 and that amount is paid or realized on sale under such process. Exemption of homestead continues during its occupation by the widow or minor children of deceased person who when living occupied the same.

Fraud. Criminal fraud—obtaining the signature of any person, firm, or corporation with intent to defraud. Fraudulently issuing or selling or duplicating and disposing of any stock, scrip, or evidence of debt of any bank or other incorporated company of this State; issue of any false receipts by warehousemen, merchants, or their agents—receipt; or to wrongfully dispose of or convert property to their own use after issuing receipt; wrongfully removing or disposing of any personal property by any agent delivered upon written agreement or instructions; wrongfully to dispose of property covered by chattel mortgage by mortgagors or of property held by contract of purchase without legal title by such purchaser or of property held under any lease by lessor. For any officer or stockholder of any bank or any other person for such bank; to sign, issue or knowingly put in circulation any note or bill of any such bank, before the capital stock is paid in, or before the president and directors thereof have complied with the law; for any officer or agent of any bank knowing such bank to be insolvent or in contemplation of insolvency, or for any assignee of the property of such bank to sell or dispose of any money or property of such bank with intent to defraud, delay or hinder creditors thereof, or for any agent or person to fraudulently obtain or dispose of any money belonging to any insurance company organized in this State.

Frauds—Statute of. No executor or administrator is liable on any special promise to answer damages out of his own estates.

Fraud, Civil. Sales, transfers, and assignments of stocks of goods, wares, merchandise, and fixtures in bulk, pertaining to conduct of any business, otherwise than in ordinary course of trade of seller, etc., void as against creditors, unless the seller, etc., five days before sale, make inventory of the goods and cost price to seller of each article and unless the purchaser demands from seller list of names and addresses of creditors and his indebtedness, and within five days before taking possession and payment notifies every creditor of such sale.

Garnishment. Process may issue in any action brought in any justice court or circuit court on contract expressed or implied, judgment or decree, to hold whatever property any person may own or have belonging to the debtor. Bills of exchange and promissory notes due in the garnishee's hands at the time of serving summons are garnishable. Property, real, or personal, things in action, equitable interests, held by fraudulent transfer from the debtor and any property liable to execution or to the payment of the debts of the debtor in the garnishee's hands may be recovered; wages of any householder not more than $30 and less then $8 for his personal labor, and of any other person for labor not more than $15 and not less than $4; wages cannot be garnished until after judgment has been given against debtor; and benefits payable by fraternal beneficiary societies, shares in building and loan association of any debtor, except as to one having a homestead exemption, are exempt from garnishment.

Holidays. (Legal) January 1st, February 12th, February 22d, May 30th, July 4th, first Monday in September, Thanksgiving Day as specified by the Governor of State, December 25th; every Saturday from 12 o'clock noon to 12 o'clock midnight, all National, State, County, or City election days.

Husband and Wife. If sued together she may defend and if either neglect to defend the other may be ordered to defend for both. If he deserts her she may be authorized by the probate court to prosecute or defend in his name. If either wrongfully retains the other's property, acquired before or after marriage, the owner may sue for same as if unmarried. Neither liable for the debts of the other before marriage, nor earnings or property of either nor the income thereof, nor shall either be liable to make compensation for labor or services rendered for the other. Husband is liable after marriage for family expenses, and for debts incurred by the wife with his express or implied authority. Either may constitute the other an attorney in fact to dispose of property. Expenses of family and children's education are not chargeable upon the property of the wife but are chargeable against the husband and he may be sued therefor.

Interest. Legal rate 5 per cent but by written agreement may be charged not to exceed 7 per cent. Forfeiture of all interest is penalty for usury. When any installment of interest upon any note, bond, mortgage or other written contract shall become due and remains unpaid, interest is allowed on such installment from the time it became due at same rate specified in the obligation or at the legal rate. Legal rate collectable on all moneys due on any written obligations and on all moneys due on all contracts express or implied, whether verbal or written; and on settlement of accounts from day of ascertaining balance due; and on judgments from day of entry; and on verdicts of jury from date to date of entry of judgments thereon. In computing time of interest and discount on negotiable paper, a month means a calendar month and a year a calendar year of twelve months.

Judgments of courts of record are not liens on real estate or personal property until by levy thereon of execution issued from the courts upon such judgments. Liens under execution levied upon real estate exist five years from and after the levy. Judgments expire by limitation in ten years from date of entering in courts of record and six years in justice courts, and cannot be renewed except by action at law thereon before expiration. Judgments of the justice of the peace may be entered in the circuit courts on transcript duly taken to the circuit court and thereupon become judgments of such circuit courts.

Liens. Any person, who pursuant to a contract with any owner, part owner or leasee of any land, furnishes labor or materials in the construction of a building, etc., on such land, shall have a lien on such structure and land to the extent of one quarter section or if in a city or village, the lot or lots upon which such structure is situated. And any sub-contractor, who furnishes materials or labor in carrying forward or completing such contract shall have a lien upon such building and land to the extent of the interest of such owner, etc. Any person, artisan, or tradesman for labor and skill applied upon any property delivered for that purpose shall have a prior lien for amount due for such labor. Hotels, boarding houses and lodging houses have a lien upon baggage and other valuables of guests; boarders or lodger for accommodations. Any person keeping and caring for domestic animals intrusted to them for that purpose have a lien for proper charges.

Limitation of Suits. Judgments of courts of record ten years, justice court judgments six years; accounts and notes and other simple contracts and for taking, detaining or injuring goods and chattels, six years from the date the action accrued; revivor; part payment, or promise in writing to pay. Absences from the State deducted from the period of limitation. Mortgages fifteen years after due or after last payment thereon. For trespasses on lands, assault and battery, false imprisonment, slanderous words or libels and mal-practice against physicians, surgeons, and dentists, two years. For misconduct of sheriff or their deputies, three years, and for personal injuries three years. For the recovery of real property, five years where the claim arises against executors, guardian's or sheriff's deed; five years where the defendant claims and is in possession of lands under deed made by auditor general of this State for taxes; and by minors and others under legal disabilities three years after removal of such disabilities; in all other cases fifteen years.

Limited Partnerships. May consist of one or more general and one or more special partners. Specials contribute specific amount of capital in cash or property at cash value, and if actually paid in not liable for firm's debts in excess of such special capital. General partners transact the business of the firm.

Married Women. May make contracts in respect to their own property and may hold and enjoy, and have the same rights and remedies regarding their property as if unmarried. They may carry on business in their own names with their own property by consent of their husbands; cannot enter into partnership with husband or any other person and become liable for the firm contracts. Married women's contracts to pay or to become liable for debts of husbands or other person voidable, may however charge their real estate or personal property to secure such indebtedness by deed, mortgage or contract. Married women are entitled to have and to hold their earnings made by their own personal effort, and may make any contracts relative thereto.

Mortgages on real estate, executed and acknowledged the same as deeds; may be foreclosed under power of sale by advertisement or in circuit court in chancery of the county wherein the property is situated. Trust deeds not in customary use but may be made and executed and will be treated as mortgages.

Chattel mortgages and bills of sale; intended as security by mortgagor, signed and delivered to the mortgagee, sufficient between the parties, but void as to creditors, subsequent purchasers and encumbrancers in good faith and without notice, unless such mortgages and bills of sale or true copies are filed in the city or township clerk's office where mortgagor resides, or if non-resident of State, in city or township where the property is situated; and unless affidavit of mortgagor or of some one for him having knowledge of the facts is annexed to the mortgage or bill of sale, showing consideration is actual and adequate and in good faith. Without such affidavit officers forbade to receive and file such mortgages; cease to be valid against creditors, subsequent purchasers, and encumbrancers in good faith, on expiration of year from filing date, unless renewed within thirty days next preceding expiration by affidavit of mortgagee showing his interest, etc., filed and annexed to the mortgage in said clerk's office; likewise each succeeding year while the mortgage exists.

Negotiable Instruments. A promissory note is an unconditional promise in writing to pay a sum certain in money, on demand, or at a fixed and determinate future time, to the order of a specified person or to bearer.

A bill of exchange is an unconditional order of one person to another requiring the drawee to pay to a certain person, or order, or bearer on demand or at a fixed or determinate future time a certain sum of money. May be payable in installments and contain provisions that on default the whole sum of money shall become due with exchange, fixed or current rate, interest and attorney's fees for collection. May authorize sale of collaterals and confession of judgments. If it reads "I promise to pay," all makers are jointly and severally liable. Must not be payable upon contingency. Cannot waive exemption from execution. Need not specify "for value received" nor place where drawn or payable. If issued, accepted, or indorsed, when over due is payable on demand. May be payable to two or more payees jointly or one or more of several payees. Want or failure of consideration, a defense against one not a holder in due course, partial failure a defense pro-tanto. One not a party, or the payee of the paper placing a signature in blank on the paper before delivery becomes an endorser. Indorser engages on due presentment the paper shall be honored and that he will pay to holder or any subsequent indorser, who may be compelled to pay; where maturity falls on Sunday or on a holiday, payment due on the next business day; but where all of such day not a holiday may if payable on demand be presented before noon.

Fraud in procuring signatures and delivery defense against any holder.

Presentment not necessary to charge anyone primarily liable. If not payable on demand present on the day due; if on demand present within a reasonable time after issue; bill of exchange payable on demand present reasonable time after last negotiation.

Fraudulent or material alterations do not affect the original instruments in the hands of innocent holder in due course.

Unconditional promise in writing to accept a bill of exchange, given before or after drawn, valid in favor of all who take it upon faith thereof for value; holder may decline qualified acceptance; if he takes qualified acceptance, drawers and indorsers are discharged.

Protest of foreign bills of exchange may be made by a notary public or any respectable resident of the place of payment in the presence of two or more creditable witnesses; drawee is not liable unless he accepts. Check or a bill of exchange on a bank payable on demand, must be presented reasonable time after issue, and if dishonored notice must be given or drawer is discharged to extent of loss caused; does not operate to assign any part of drawer's funds; bank is not liable unless it accepts or certifies. If holder has check certified drawers and indorsers are discharged.

The present negotiable instruments law of Michigan took effect Sept. 16, 1905, and repeals all acts or parts of acts inconsistent with its provisions; but does not apply to instruments made prior thereto; materially changes the law in this State and should receive special examination in every doubtful case.

Power of Attorney. Almost every act that any person, firm or corporation may perform, may be performed by an attorney in fact. Conveyances, mortgages, or leases for more than three years' term by attorney in fact, the power of attorney must be in writing signed, sealed and acknowledged same as a deed of lands, to be admitted for record or to proof thereof.

Probate Law. (See Administration of Estates.)

Protest. (See Negotiable Instruments.)

Replevin. Goods or chattels wrongfully taken or detained may be replevined by owner or part owner or party entitled to possession. Affidavit of plaintiff or agent necessary for issue of writ. If from circuit courts plaintiff required to give bond with sufficient sureties to the officer within twenty-four hours after seizure and appraisal of the property which must not be delivered to plaintiff within forty-eight hours; and in the meantime if the defendant shall give sufficient bond to the officer he shall return the property to the same person from whom he took it; in that case if plaintiff recovers he may recover on the defendant's bond; if he fails defendant may recover on plaintiff's bond according as the judgment may warrant. In justice courts bond with sufficient sureties must be given and filed in double value of the property before writ issues.

Taxes. State and county payable every year after December 1st, delivered to county treasurer March 1st, thereafter, and if delinquent bear interest 1 per cent per month. Returned to auditor general of State, if not paid, and by him enforced by foreclosure in chancery in every county, and the taxable property sold under decree of the court by county treasurer each parcel for the amount of taxes and charges against same; redeemable one year thereafter and does not

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

become absolute until proceedings taken by purchaser or writ of assistance, which must be instituted within five years by service of written notice upon owners six months before application for such writ. If decree regular and property taxable, and due notice is given and served, purchaser is entitled, upon due proof thereof to writ of assistance and possession unless redeemed pending the notice by payment of double the amount paid by purchaser and $5.00 for each parcel redeemed. City taxes are governed by charter or by the general act under which cities and villages are organized.

Wills. Codicils. Every person of full age (twenty-one years) and of sound mind may make; must be in writing, signed by testator or by some person in his or her presence duly authorized by him or her and attested and subscribed in his or her presence by two or more witnesses competent as such at the time. If one of the subscribing witnesses shall testify to the execution of the will in all particulars and testator was of sound mind at the time will was made, the court may admit the will, in case no person appears to contest it; if none of the witnesses reside in the State at the time of proving the will, the court may admit the testimony of other witnesses to prove testator's sanity and execution and proof of the signature of testator and subscribing witnesses. Probate of will conclusive of its due execution and cannot be assailed collaterally. Foreign wills, duly admitted to probate without the State, may be admitted and recorded in any county of the State in which testator left real or personal estate by duly filing, an exemplified copy of said will and of the record admitting same to probate. A nuncupative will in which the value of the estate bequeathed does not exceed $300, duly proved by two witnesses, may be allowed. Wills may be revoked by burning, tearing, cancelling, or obliterating with intention of revoking same by testator, or by some other writing signed, attested, and subscribed in the manner provided for execution of wills but shall prevent revocation implied by law.

SYNOPSIS OF

THE LAWS OF MINNESOTA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by OPPENHEIMER, DICKSON, HODGSON, BROWN & DONNELLY
Attorneys at Law, St. Paul. (See Card in Attorneys' List.)

Acknowledgments may be certified by the following officers: 1. Within the State by a resident judge, clerk or deputy clerk of any court of record therein, a notary public, justice of the peace, town, city or village clerk, or recorder, court commissioner, register of deeds, or county auditor, or their deputies, county commissioner, or member of the legislature. 2. Out of the State but in the United States by a judge of the supreme, circuit, or district courts of the United States, or of any court of record of any state, territory, or district, the clerk or a deputy clerk of any such court, a notary, a justice of the peace, or any commissioner appointed by the governor of this State for that purpose. 3. In foreign countries by a notary public, or by any minister, charge d'affaires, commissioner, consul, commercial agent or other consular or diplomatic officer of the United States appointed to reside in such country, and deputies or other representatives of such officers. The form of the certificate may be, "On this.....day of....., 19....., before me personally appeared.....to me known to be the person described in, and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed." In case of corporation it may be, "On this.....day of.....19....., before me appeared A. B. to me personally known, who being by me duly sworn did say that he is the president (or other officer) of (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was executed in 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." If made outside the State the impression of the official seal of the certifying officer must be affixed, or there must be attached the certificate of the clerk of a court of record of the county or district in which it is made under his seal that the signature of the certifying officer is genuine.

Actions. The distinction between actions at law and suits in equity is abolished. There is only one form of action. It is called a civil action and must be prosecuted in the name of the real party in interest except that executors, administrators, trustee of an express trust and persons expressly authorized by statute may sue without joining the person for whose benefit the suit is brought.

Administration of Estates. Estates of deceased persons are administered in probate courts of which there is one in each county presided over by the probate judge of the county.

In granting letters of administration preference is given: 1. To the surviving spouse or next of kin or such suitable person as they or either of them select. 2. If no application is made for thirty days after death of intestate, to principal creditor or creditors, or some person interested, and if deceased was native of foreign country to the consul or other representative of that country residing in this State, or to such competent and suitable person as he may select.

Upon granting letters the court makes an order limiting the time within which creditors may present their claims. This time must not be less than six or more than twelve months; but may be extended for good cause to a date not more than eighteen months after notice given of the order. On proof by affidavit that there are no debts the time limited may be three months. Notice of the order is given by publication thereof once each week for three weeks in a newspaper in the county. Claims not presented within time limited are barred. Non-resident executors and administrators may sue in this State.

Aliens. (See right to hold property.)

Arbitration. All controversies which can be the subject of a civil action may be submitted to one or more arbitrators for decision. except a claim to an estate in fee or for life in real estate.

Arrest. There is no arrest for debt.

Assignments. Statutes relating to assignments for the benefit of creditors are in force except as affected by the U. S. Bankruptcy Act of 1898.

Practically they may be said to be superseded by that act.

Attachment. Before allowing a writ of attachment, the court must require of the plaintiff a bond in the sum of at least $250, and an affidavit of the plaintiff, his agent or attorney. (1) That the debt was fraudulently contracted or (2) the defendant is a foreign corporation or non-resident or (3) has departed from the State as he believes with intent to defraud or delay his creditors, or to avoid the service of a summons or keeps himself concealed therein with like intent or (4) has assigned, secreted, or disposed of his property with intent to delay or defraud his creditors or is about to do so.

Banks. Three or more persons may incorporate as a bank. They must first secure from the state securities commission a certificate of authorization, which is granted or denied after a hearing and introduction of evidence. Capital required is $10.000 in towns of 1,000 or less population; $15,000 in towns of 1,000 to 1.500; $20,000 in towns of 1,500 to 2,000; and $25,000 in towns exceeding 2,000 population. Capital stock must be fully paid in cash before bank can do business. Stockholders are individually liable for debts of bank in an additional amount equal to the par value of stock owned by them, and this liability continues one year after any transfer of the stock. At least one-fifth of the net profits must be placed in surplus fund before any dividend is paid until the surplus amounts to 20 per cent of the capital, and this surplus must be maintained unimpaired.

Every bank must make to the superintendent of banks not less than four reports each year which must be published. Liabilities to a bank of any person, corporation or firm, for money borrowed, including therein liabilities of the several members thereof, shall at no time exceed 15 per cent of its capital and surplus. It must have a reserve equal to one-fifth of all its matured or demandable liabilities, one-half of which must be cash, and the remainder may be balances due from solvent banks. In case of insolvency or violation of the banking laws, the superintendent of banks may take possession. and apply to the court for a receiver. Branch banks are prohibited.

Bills of Lading. The Uniform Bills of Lading Act became effective April 20, 1917.

Initial Carrier receiving property for transportation between points within the State, liable for loss, damage or injury caused by it or other carrier en route, and all contrary provisions in Bill of Lading void.

Blue Sky Law. The commission consists of three members, the commissioner of banks, the commissioner of insurance and the commissioner of securities. The law prohibits the selling by anyone of securities within the state until such securities have been registered with the commission and until the commission has granted permission to sell the same. Securities are defined to include any stock, share, bond, note, debenture, commercial paper, evidence of indebtedness, investment contract, interest in or under a profit sharing or participating agreement or scheme, any interest in or under any oil, gas or mining property or in any property represented to contain or be a prospect for oil, gas or minerals, beneficial interest in a trust or pretended trust or any interest in the capital, assets, property or profits of any person.

The commission is given rather extensive powers to regulate the selling price of securities and cost of promotion, to fix the conditions under which a permit shall be granted to require the furnishing of relevant information, and to suspend or annul existing permits.

The more important securities exempt under the act are: (1) Any security issued or guaranteed by the United States or by any state, territory or insular possession thereof, or by the District of Columbia, or by any political subdivision or agency of a state, territory or insular possession having the power of taxation or assessment; (2) Any security issued or guaranteed by any foreign government with which the United States is at the time of the sale thereof maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment; (3) Any security issued by a national bank or by a corporation or governmental agency created by Congress other than those created under the code of laws for the District of Columbia or for any territory or possession of the United States, provided such corporation is subject to supervision or regulation by the United States Government; (4) Certain securities issued or guaranteed by railroads or public service utilities; (5) Securities listed on the New York Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, which securities have been so listed pursuant to official authorization by such exchange, and all securities senior to any securities so listed or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect; (6) Commercial paper or negotiable promissory notes maturing within fourteen months from the date of issue; (7) Securities of certain corporations organized for religious, educational and charitable purposes, and not for pecuniary gain; (8) Policy contracts of insurance companies licensed to do business in the state; (9) Any security issued by a building and loan association organized under the laws of this state; (10) Securities of cooperative associations organized under the laws of the state for agricultural, dairy or livestock purposes.

Certain sales are exempt, such as isolated sales; sales of notes or bonds secured by a mortgage lien when the entire lien, together with all notes or bonds secured thereby, is sold to a single purchaser at a single sale; sales made under the order of court; stock dividends or issuance of increase of stock to existing stockholders where no commission is paid; sales to banks, savings institutions, trust companies, insurance companies or licensed brokers.

Chattel Mortgages. Every mortgage of personal property which is not accompanied by immediate delivery and followed by actual and continued change of possession is void as to creditors and subsequent purchasers and mortgagees in good faith, unless it is made in good faith, attested by two witnesses, acknowledged and filed with the register of deeds of the county in which the mortgagor resided at the time of its execution, is a resident of the State, or of that in which the property was then situated if a non-resident. If the mortgagor resides in St. Paul, Minneapolis or Duluth or is a non-resident, and the property is situated there, the mortgage must be filed with the city clerk of such city instead of the register of deeds of the county. Duplicates or copies certified by any officer with whom the mortgage has been properly filed, may be filed in other places wherein any part of the property was situated when the same was made. As against creditors of the mortgagor and subsequent purchasers and mortgagees in good faith the lien does not continue beyond the term of six years from the date of filing the mortgage unless the indebtedness is not then due and payable by its terms, in which case it continues two years after the maturity of the debt and no longer.

Every mortgagee of a chattel mortgage shall at the time of its delivery make and deliver to the mortgagor a full, true and complete copy of such mortgage. No register of deeds nor city clerk is allowed to receive or file any chattel mortgage which does not contain a receipt of the signer of the mortgage to the effect that a copy of such mortgage has been received by him.

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

Conveyances. Deeds and mortgages of real estate must be executed in the presence of two subscribing witnesses and to entitle them to record must be acknowledged by the person executing the same. Conveyances made out of the State, may be executed as above, or according to the laws of the place of execution.

Corporations. May be organized by any number of persons, not less than three, for the purpose of engaging in any lawful business. The amount of capital stock shall in no case be less than $10,000, divided into shares of not less than $1.00 or more than $100. The incorporators must sign and acknowledge a certificate specifying: 1. the name, general nature of business, and principal place of transacting the same. 2. Period of its duration, if limited. 3. Names and places of residence of incorporators. 4. In what board management is vested, date of annual meeting at which such board shall be elected, names and addresses of persons composing board until first election. 5. Amount of capital stock, how the same is to be paid, number of shares and par values of each, and if more than one class, a description, and terms of issue and method of voting of each. 6. Highest amount of indebtedness to which corporation shall be subject. This certificate is filed with the secretary of state and with the register of deeds of the county in which the principal place of business is located and published in such county two successive days in a daily newspaper, or two successive weeks in a weekly.

Every stockholder in any corporation, except those organized for the purpose of carrying on a manufacturing or mechanical business is liable to creditors of the corporation in an amount equal to the par value of the stock owned by him.

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Foreign Corporations. Every foreign corporation organized for pecuniary profit before it can transact or continue business in this State, acquire, hold or dispose of property or bring suit here must appoint an agent residing in the State, authorized to accept service of process, and must file with the secretary of state an authenticated copy of such appointment and of its charter and a verified statement showing the proportion of its capital stock represented by its property and business in this State, and upon that it must pay a fee. This act does not apply to exclusively manufacturing corporations, traveling salesmen soliciting business for non-resident corporations, nor to those engaged only in the business of loaning money or investing in securities, nor to those organized to raise and improve live stock, cultivate farms, can fruits or vegetables, nor to those whose sole business is transportation of freight or passengers by water.

Courts. District courts hold one or more terms a year in each organized county, have original jurisdiction in all civil actions at law and in equity, and in all criminal cases where the punishment exceeds three months' imprisonment or a fine of more than $100.

The supreme court has appellate jurisdiction in all cases, but there is no trial by jury in that court. It has original jurisdiction in such remedial cases as are prescribed by law.

Probate courts have exclusive jurisdiction of matters connected with the settlement of estates of deceased persons, minors, and insane persons. Terms are held on the first Monday of each month in each organized county.

Municipal courts exist in certain cities, and are courts of record with limited jurisdiction in civil and criminal actions.

Justices of the peace have no jurisdiction in civil actions where the amount involved exceeds $100.

Days of Grace are abolished.

Depositions may be taken at any place within or without the State upon notice in writing, stating the reason for taking the same, the time and place, and giving the opposite party one day for preparation, and one day for every 100 miles, exclusive of Sundays and the day of service, before any officer authorized to administer oaths.

Descent and Distribution of Property. Homestead descends to surviving spouse for life, remainder to children and issue of deceased children. If no children or issue of deceased child, then to surviving spouse in fee, exempt from debts not a valid charge thereon at time of intestate's death. After payment of debts and certain allowances to the surviving spouse out of the personal property, the residue of the estate descends as follows: 1. One-third to the surviving spouse, balance in equal shares to children and lawful issue of deceased child by right of representation. 2. If no surviving child or lawful issue of deceased child the whole estate descends to surviving spouse if any. 3. If no issue or surviving spouse, to father and mother in equal shares, or if but one survive, to such survivor. 4. If no surviving issue, spouse, father or mother, in equal shares to brothers and sisters and lawful issue of deceased brother or sister. 5. If no issue, spouse, father, mother, brother, sister, or living issue of deceased brother or sister, to next of kin, in equal degree, but those who claim through nearest ancestor preferred to those claiming through ancestor more remote. 6. If no spouse or kindred, to the State.

Dower is abolished.

Employers Liability Act. Effective since April 24, 1913.

Executions issue from district courts any time within ten years after judgment and may run to any county where judgment is docketed, are returnable in sixty days and may be renewed for sixty days at a time on reuest of judgment creditor or his attorney. Personal property is sold on ten days' posted notice; real estate on six weeks' published notice, and subject to redemption by judgment debtor or his assigns within one year from date of sale.

Exemptions. Homestead outside of incorporated municipality may include eighty acres. If in incorporated place containing less than 5,000 inhabitants, its area shall not exceed one-half acre, and in larger incorporated places, one-third of an acre without regard to value. Family pictures, library, musical instruments for use of family, wearing apparel, beds, stoves, cooking utensils used by family, other household furniture not exceeding $500 in value, three cows, ten swine, one yoke of oxen, and a horse, or in lieu thereof, a span of horses or mules, one hundred chickens, twenty sheep, the wool therefrom raw or manufactured, food for such stock for one year's supply, either provided or growing or both, one wagon, cart or dray, one sleigh two plows, one drag, and other farming utensils, including tackle for teams, not exceeding $300 in value, provisions for debtor's family for one year's support, tools kept for purpose of carrying on trade, and stock manufactured in whole or in part by debtor not exceeding in value $400; library of professional man; presses, type, and tools of publisher of newspaper, not exceeding $2,000, and his stock in trade not exceeding $400; watch, sewing machine, typewriter, bicycle, seed for use of debtor for one season not exceeding certain amounts and binding material sufficient for use in harvesting the crop raised from such seed; library and apparatus of college or school; money payable to wife or child from insurance on life of deceased husband or father nor exceeding $10,000; money or relief from benefit association; money from insurance on exempt property; wages not exceeding $35 for services rendered during preceding 30 days; but all wages paid and earned within said thirty day period shall be considered a part of (or all) of said exemption (Chap. 202, Laws 1915.)

Holidays. January 1st, February 12th and 22d, Good Friday, May 30th, July 4th, first Monday in September, Tuesday after first Monday in November each even-numbered year (election day), November 11th (Armistice Day), and December 25th are legal holidays. Thanksgiving day is so far that negotiable instruments or contracts due that day are payable next succeeding business day.

Interest. Six per cent is legal rate, but by special contract any rate not exceeding 8 per cent may be exacted. Usurious contracts are void.

Judgments may be entered by default in district courts at expiration of twenty days after service of summons. When docketed in those courts they become liens upon all real estate of the debtor in the county where docketed then owned by him or afterwards acquired, and the lien continues for ten years after the entry of the judgment. Transcripts of judgments in justice and municipal courts may be filed in district court and there docketed, and then become lien on real estate.

Liens. To preserve a mechanics lien a verified statement must be filed by the lien claimant within ninety days after furnishing the last item of labor or material in the office of the register of deeds of the county in which the improved premises are situated, or if claimed upon a line of railway or its appurtenances with the secretary of state. The lien may be released by a court order on deposit with the clerk of the District Court of a sufficient sum of money to protect the lien claimant, and anyone interested in the property may bring an action in the nature of an action to determine adverse claims to remove the lien. Action to foreclose the lien must be commenced within one year of the time of the filing of the verified statement.

Limitation of Actions. On contracts express or implied six years; judgments ten years; to foreclose mortgages fifteen years; to recover real estate, fifteen years. But no action shall be maintained on a judgment note, or other instrument authorizing Confession of Judgment unless begun within one year after Cause of Action accrued; and no action shall be maintained upon any judgment of any court of the U. S. or of any State or Territory entered by Confession under a warrant of attorney, unless the action upon such judgment be begun within one year after the rendition or entry thereof.

Married Women. Property acquired by wife before or after marriage remains her separate estate. It is liable for her debts and torts to the same extent as if she were unmarried, and she may make any contract which she could make if unmarried, except that no conveyance or contract for sale of her homestead or any interest therein is valid unless her husband joins in the same.

Both husband and wife are liable for necessaries furnished to and used by the family.

Mortgages on real estate executed in the presence of two subscribing witnesses, acknowledged and recorded in the office of the register of deeds of the county in which the mortgaged premises are situated may be foreclosed by publication or by action. The mortgagor or his assigns may redeem within one year from the date of the foreclosure sale.

The authority of an attorney conducting a foreclosure by advertisement, must be in the form of a Power of Attorney, executed and acknowledged by the mortgagee or assignee in the same manner as a conveyance and recorded prior to the sale in the County where the foreclosure proceedings are had.

The mortgagor may covenant to pay or authorize the mortgagee to retain any attorney's fee in case of foreclosure of not exceeding $25; where the mortgage debt does not exceed $500; $50 where the mortgage debt exceeds $500 and does not exceed $1,000; $75 where the mortgage debt exceeds $1,000 and does not exceed $5,000; $100 where the mortgage debt exceeds $5,000 but does not exceed $10,000; and $200 where the mortgage debt exceeds $10,000. Mortgagor or subsequent lien holder may before foreclosure sale pay debt and costs in full in which case attorney's fee shall not exceed fifty dollars.

A Registry Tax of 15 cents is imposed upon each $100 or fraction thereof of the principal debt secured by any mortgage covering property within the State of Minnesota and recorded in said State. In case the maturity of any portion of the debt so secured shall be fixed at a date more than five years after the date of said mortgage, the amount of such Registry Tax shall be at the rate of 25 cents on each $100. No such mortgage or assignment or satisfaction thereof or papers relating to its foreclosure, shall be recorded or registered unless such tax has been paid, nor shall any such document or record thereof be received in evidence in any court or have any validity as notice or otherwise. If such mortgage describe real estate outside of Minnesota, such tax shall be imposed upon such proportion of the whole debt secured as the value of the real estate described in this State bears to the value of the whole real estate, such value to be determined by the State Auditor upon application of the mortgagee.

Notes and Bills of Exchange. Uniform negotiable Instruments Law has been in force since April 15, 1913. Commercial paper is payable at the time fixed therein without grace. When due or payable on Saturday or on Sunday, or any legal or bank holiday, the same is payable upon the business day next succeeding, and may be protested on such succeeding day.

Right to Hold Property. No person unless he be a citizen of the United States, or has declared his intention to become a citizen, and no corporation unless created under the laws of the United States, or of some state thereof, shall acquire lands exceeding 90,000 square feet, except by devise, inheritance, or through security for indebtedness. This does not apply to actual settlers on farms not exceeding 160 acres, or to subjects of a foreign country, whose rights to hold lands are secured by treaty.

No corporation, more than 20 per cent of whose stock is owned by persons not citizens of the United States, or by corporations not created under its laws, or those of some state thereof, can acquire lands, and no corporation unless organized for the construction or operation of a railway canal or turnpike can acquire more than 5,000 acres or more than is necessary for its operation, and lands granted it by the State or United States.

But this does not apply to lands acquired in the collection of debts nor to a person or corporation engaged in selling lands to actual settlers, or engaged in manufacturing in Minnesota while so engaged. Such persons or corporations not so engaged must sell what they had April 13, 1911, within ten years from that date and sell what they acquire subsequent to that date within ten years after they acquire it.

Sales of Goods. The Uniform Sales Act became effective April 20, 1917.

Securities Commission. See Blue Sky Law.

Taxes. Personal property is assessed once a year; real estate every two years. Taxes on both classes of property are levied every year. Taxes on real estate constitute a prior lien. Land on which taxes not paid sold on second Monday in May each year. Redemption may be made sixty days after service of notice of expiration of redemption; this notice cannot be served until the expiration of three years after sale. Person redeeming must pay original tax penalties and interest at the rate bid at the sale and in addition thereto costs. One-half of real estate taxes must be paid June 1 and if not, penalty of 5 per cent and 1 per cent per month until November 1 attaches. Second half must be paid November 1, and if not then paid, a penalty of 10 per cent attaches. Infants and persons of unsound mind may redeem within one year after such disability shall cease, but the right to redeem must be established in a suit in court. Moneys and credits are subject to an annual tax of three mills on each dollar of the fair cash value thereof. Moneys and credits belonging to incorporated banks located within the state are exempt. Real estate mortgage indebtedness is exempt from the moneys and credits tax; but is taxed under the mortage registry tax law at the rate of 15 cents per hundred, except where the indebtedness or a portion thereof runs for a longer period than five years and sixty days, in which event the rate on such indebtedness or portion is 25 cents per hundred.

Wills. Every person of full age and sound mind may dispose of property by will in writing signed by the testator, or by some person in his presence and by his direction, attested and subscribed in his presence by two or more competent witnesses. Every person includes married women. If, after making a will the testator marries, the will is thereby revoked

SYNOPSIS OF

THE LAWS OF MISSISSIPPI

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by SCOTT & SCOTT, Attorneys at Law, Capital National Bank Bldg., Jackson Miss.

Accounts. Sworn to entitles plaintiff to judgment, unless defendant files affidavit denying. The affidavit must be by the creditor or his agent on actual knowledge, affidavit on information and belief not sufficient. All accounts must be itemized.

Acknowledgments before any judge, clerk of a court of record under his seal, justice of the peace, notary public, or member of the board of supervisors, before any police justice, or mayor of any city, town, or village. 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, sec-

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

retary of legation, or consul of the United States. The certificate shall show that this 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. Acknowledgment must state that party "acknowledged that he *signed and delivered*" instrument.

Actions. All distinction as to forms abolished. Service five days before return day. All action triable in the circuit court at first term 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. Claims against deceased must be registered within six months after the first publication of notice to creditors; registration stops the general statute of limitations. All debts are to be paid before heirs, distributors, or legatees. Claims against insolvent estates are paid pro rata.

Affidavits or Oaths 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 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. See title "Corporations."

Appeals from justice court to circuit court within ten days. From circuit and chancery courts to supreme court within six months, but notice to stenographer must be given within ten days after adjournment of Court, in order to incorporate evidence in record. Appeals also in certain cases from board of supervisors and municipal courts.

Arbitration. Parties may submit to arbitration of one or more disinterested arbitrators, with agreement that proper court shall enter judgment.

Arrests made by certain officers, or private persons may arrest for offense committed in his presence. No arrests or imprisonment for debt.

Assignments and Insolvency. No insolvent law. An assignment may be made for the benefit of creditors. Debtor, though insolvent, may prefer creditors, if in good faith and no benefit, direct or indirect, is reserved. No provision for the discharge of a debtor on his making an assignment. In general assignments, where the value exceeds $1,000, the assignee must give bond and administer the trust in chancery. Preferences not prohibited. Practically superseded by bankrupt law.

Attachment. Against a debtor who is a non-resident or who removes or is about to remove himself or property out of the State: who so absconds or conceals himself that he cannot be served with a summons: or who incurred the debt in conducting the business of a ship, steamboat or other water craft in some of the navigable waters of this State; or who assigns or disposes of his property, or some part thereof, or is about to assign or dispose of his property with intent to defraud his creditors; or who has property or rights in action which he conceals and unjustly refuses to apply to the payment of his debts; or who has converted or is about to convert his property into money; or evidence 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. Plaintiff must furnish bond double the debt and make affidavit as to one or more grounds. Suit does not abate on verdict for defendant, on a plea denying grounds; but judgment on the debt, to be offset by damages in favor of defendant for wrongfully suing out attachment. Any creditors may intervene and contest ground of attachment.

Attachment in Chancery on bill against the property, or debts of an absent, non-resident, or absconding debtor. A lien is acquired by the suit. If a writ for the seizure of goods is obtained, bond is required. Available to non-residents.

Bad Check Law. The maker of any check, draft or order, on a bank or depository, given for a present valuable consideration, is subject to fine or imprisonment if he fails to make the same good, and may be prosecuted where he delivered the check or where the bank is located.

Banks. Required capital stock as follows: In cities, villages and communities with population 1,000 or less; $10,000.00: Population 1 000 and not more than 2,500; $15,000.00: Population 2,500 and not more than 6,000; $25,000.00: Population from 6,000 to 10,000; $35,000.00: Population 10,000 or more; $50,000.00. No bank to commence business until all of capital stock is paid up in money and a certificate of public convenience obtained from the Superintendent of Banks.

This does not apply to banks existing prior to 1914. Banks are under the supervision of a Superintendent of Banks, which is elected by the Banks of the State, who is assisted by Examiners.

Deposits guaranteed; depositors names not to be divulged; banks penalized for failure to comply with orders of examiners; Banks must have at least three directors; unlawful for any bank to receive and hold deposits for six months in excess of ten times the paid up capital and surplus, provided, however, any bank, by the permission of the Superintendent of Banks may hold deposits not in excess than 15 times its capital and surplus, but permission may be withdrawn upon six months notice.

All except National Banks are required to make a report upon call by the Superintendent of Banks and such call shall be made by the Superintendent for the said dates and as often as calls are issued by the comptroller of the currency of the United States for reports from National Banks.

The Superintendent shall prescribe the forms of such reports. Said reports shall be sworn to by either the owner, President, manager or cashier of the bank making them and attested by not less than two of the Board of Directors; resources and liabilities shall be stated in appropriate heads and the same shall be caused to be published in the form prescribed by the Superintendent of Banks.

Banks must give notice to administrators or executors of deceased persons of money or papers held by them for the deceased.

Directors of every bank to hold at least three regular meetings each year and keep a complete record of all proceedings. Banking corporations may exercise without amendments of their charter and use charters authorizing them to engage in legitimate function of trust company, provided, however, that before any Bank, whose charter merely authorizes exercises of general banking functions before performing the functions of the trust company, the previous written consent of the Superintencent of Banks shall be obtained.

Foreign banks, National excepted, required to pay privilege license before engaging in trust business. Publication of charter is not required, but the same shall be recorded in the office of the Chancery Clerk and one in the office of the Banking Department and one in the office of the Secretary of State. Every bank with paid up captial of as much as $100,000.00 may do business as trust company, may not act as a guardian, perform the duties of a trust company, may establish a special mutual loan department, in such department interest on loans not to exceed 8% per annum. Bank not permitted to allow the use of its name by others in making loans.

Banks are authorized to charge exchange of not exceeding one-tenth of one per cent on "cash items" and never less than ten cents, and shall charge exchange on checks and drafts payable to non-residents, except the United States. Cash items shall not be protested for non-payment of exchange, but payment may be refused unless exchange is paid.

Blue Sky Law. Under this statute, certain statements, reports, etc., must be made to the Secretary of State, and a permit received, before the sales of stock in certain corporations. Since it is not the class of corporation, or the object for which it is incorporated, that determines whether it is subject to this act, but the promotion fees, commissions, etc., that are to be paid out of the capital subscribed, it is best that every corporation have its counsel examine this law and determine for itself whether it should comply.

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, except as to chattels used or acquired in the business of a "trader." Banks, professional men and manufacturers, are not traders.

Collaterals. General law prevails.

Contracts for sale of land, or for lease for more than one year, 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, or payment in whole or part is made. Dealing in futures is forbidden and a ground for attachment. Gambling contracts and ordinary contracts made on Sunday void. Contracts by foreign corporations who have not complied with registration of charter law are void.

Conveyances. May vest title presently or in future. All estates in land greater than for one year must be by deed, and to affect purchasers without notice must be recorded. Corporations must file all deeds to them in sixty days. Estates tail 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 convey under seal. In all other cases private seals abolished. Conveyances or devises to two or more, or to husband and wife, create tenancy in common. Rule in Shelly's case abolished. Remainder 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. The words "convey and warrant specially" operate as a warranty only against the grantor or those claiming under him. A quitclaim deed has practically the same effect. Husband and wife, if living together must join in conveyance or incumbrance of homestead of either, or it will be void as to all under $3,000.

Corporations. Corporations 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, may be created under a general charter.

Application for charter signed by each (not less than two) of the incorporators and acknowledged. 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, must be forwarded to the secretary of state together with the fee for recording, and he must refer 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 transmits it to the applicants. It must 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, the corporation must make report of the organization to the secretary of state. If such report be not made the charter granted shall be void, and all persons doing business thereon shall be deemed partners in the business and liable as such

Corporations thus created possess the powers usual and incident to private corporations generally, but existence is restricted to fifty years. That all corporations, heretofore or hereafter organized, whether they be domestic or foreign, are hereby authorized and clothed with full power and right to own, in free simple or otherwise, lands for any legitimate purpose in this state; and no restriction against such corporations holding lands for agricultural purposes shall exist or obtain in this state, except that no one corporation shall hold and cultivate for arricultural purposes more than 10,000 acres of land in any one year. Corporations to file their deeds in the office of the Chancery Clerk where the property is located within 60 days after the date of the deed.

Stockholders individually liable for the debts the corporation contracted during his ownership of stock for the balance that may remain unpaid for stock subscribed for and may be sued by any creditor. Directors are liable for the wilful mismanagement or for allowing capital withdrawn while debts exist. Corporations under the laws of other states or of foreign countries may sue in this State, and have the same rights in the State as non-resident individuals. The legislature may repeal or amend charters granted after November 1, 1890, provided rights of stockholders are not infringed. All foreign corporations doing business in this state shall file a certified and duly authenticated copy of its charter or certificate with the secretary of state. Charter must be certified by the president and secretary or other chief executive under the corporate seal. Fees are to be paid according to capital stock, viz.: $10,000 and under, $20.00. Between $10,000 and $30,000, $40.00. Between $30,000 and $50,000, $60.00. When over $50,000, one-tenth of one per cent and not to exceed $250.

Costs. Non-resident or insolvent plaintiff required to give security though an insolvent citizen may sue in forma pauperis.

County Court created, effective January 1st, 1927; concurrent jurisdiction with Justice and Circuit Court in misdemeanor cases and in civil cases in matters where amount involved does not exceed $1000.00 and concurrent with Chancery Court up to same amount, except matters in equity restricted by constitution. Court meets monthly, rule of practice same as in court where jurisdiction would have been except for county court. Certain counties only to said court.

Courts. Terms and Jurisdiction. Justices' courts meet twice each month; circuit and chancery courts in each county twice a year; supreme court twice a year in October and March. Justices' courts have jurisdiction up to $200. Circuit courts have general jurisdiction of all common law actions where the amount or value 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

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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.

Creditor's Bills may be filed under general Laws to subject equitable assets and in aid of execution at law. Such suits 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.

Curtesy and Dower. Both abolished since 1880.

Deeds. (See Conveyances.)

Depositions in civil cases, on written or verbal interrogatories; ten days' notice to opposite party. If such party is absent and has no attorney, filing interrogatories ten days sufficient. 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 then certified, 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.

Descent and Distribution. Estates of inheritance, real and personal descend. 1. To children and their descendants per stirpes. 2. To brothers and sisters and father and mother in equal parts and their descendants by representation. 3. To the next of kin according to the civil law. Except among brothers and sisters there is no representation among collaterals. Advancements must be brought into hotchpot. 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 property escheats. Illegitimates inherit from the mother and from her other children and her kindred. Children of illegitimates and their descendants inherit from brothers and sisters of their father or mother and from grand parents. But children of illegitimates do not inherit from any ancestor or collateral kindred if there be legitimate heirs of such ancestor or collateral kindred, in the same degree. The mother of an illegitimate and her other children, legitimate or otherwise, inherit from the illegitimate. Exempt property of husband or wife descends to survivor and children as tenants in common.

Dower and Curtesy have been abolished since 1880.

Evidence. In the main common law rules apply. Parties and interested persons competent; except against decedent. Affidavit to open account entitles to judgment, unless defendant denies under oath. Warehouse receipts and bills of lading 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 ten 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 property sold under execution or mortgage.

Exemptions. The following personal 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.

The following property of each head of a family, to be selected by the debtor, is exempt.

Two work-horses or mules, and one yoke of oxen.

Two head of cows and calves.

Ten head of hogs.

Twenty head of sheep and goats each.

All poultry.

All colts under three years old raised in this State by the debtor.

Two hundred and fifty bushels of corn.

Ten bushels of wheat or rice.

Five hundred pounds of pork, bacon, or other meat.

One hundred bushels of cotton seed.

One wagon, and one buggy or cart, and one set of harness for each.

Five hundred bundles of fodder and one thousand pounds of hay.

Forty gallons of sorghum or molasses or cane syrup.

One thousand stalks of sugar cane.

One molasses mill and equipments, not exceeding one hundred and fifty dollars in value.

Two bridles and one saddle, and one side saddle.

One sewing machine.

Household and kitchen furniture not exceeding in value two hundred dollars.

All family portraits.

One mower and rake for cutting and gathering hay or grain.

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 and lodging.

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

Payable to Executor. Life insurance policy not exceeding five thousand dollars, payable to the executor, or administrator, 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 five thousand dollars, and the excess of the latter only shall be exempt. Life insurance policy to amount not exceeding $10,000.00 goes to parties named as beneficiaries free from liability for debts of insured.

Homestead in Country. Every citizen being a householder, and having a family, shall be entitled to hold exempt the land and buildings owned and occupied as a residence, but the quantity 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 in Cities. Every citizen being a householder, and having a family residing in any city, town, or village, shall be entitled to hold, 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.

Homestead exemption may be increased to $3,000 in value by filing for record in chancery clerk's office a declaration claiming as exempt certain property.

No property is exempt as against purchase money or for labor performed on it or material furnished therefor. Money loaned at rates of interest not exceeding 6 per cent is exempt from taxation.

Foreign Corporations may do business and sue and be sued as in case of domestic corporations. (See Corporations.) Foreign corporations doing business in the State without recording their charters are subject to fine; and all contracts are null and void.

Fraud and Fraudulent Conveyances. (See Attachment, Bills of Lading, Limitations, Creditor's Bill.)

Sales of merchandise otherwise than in usual course of business and sales of entire stock of goods in gross presumed fraudulent and void as to creditors, unless 5 days before sale, seller make complete inventory and the purchaser made demand of seller for name, address and amount of claim of each creditor, and the purchaser notified personally or by mail each of creditors of proposed sale and of cost price of merchandise and the price to be paid therefor. Purchaser violating this act held to be trustee for seller's creditors to extent of reasonable value of goods and required to pay them to that amount, even if he has paid seller in full.

In case of destruction of stock of merchandise by fire, on which there is insurance, holder of policies to notify creditors he owes for merchandise of his loss and amount of insurance carried, within 5 days.

Garnishment on judgments or in attachment. Binds debts or property of debtor in garnishee's hands.

Grace. Abolished.

Holidays are January 1, January 19 (Lee's birthday), February 22, April 26, June 3, July 4, first Monday in September, November 11 (Armistice day), fourth Thursday in November, and December 25. Instruments falling due on a Sunday or holiday 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 on Saturday when that day is not an entire holiday.

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 to husband if wife owns homestead. (See Exemptions.)

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.)

Insolvency. No general insolvent laws, but insolvent estates of decedents are divided among creditors pro rata.

In case of insolvency partnership property is applied first to partnership debts, and e converso.

Interest. Legal rate 6 per cent per annum, and money loaned at not exceeding that rate is exempt from any taxes, but parties may contract in writing for 8 per cent; when more is stipulated or collected all interest is forfeited. When above 20 per cent interest and principal forfeited and pavments forfeited.

Judgments enrolled become liens on defendant's property within the county. 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. Lien of judgment continues seven years.

Jurisdiction. (See Courts.)

Liens. Lien of an enrolled judgment, of mechanics and material men, of landlord and laborer on agricultural products, innkeeper's and stablekeeper's lien, and lien of saw mill laborer. The seller of goods may enforce lien for the price of the same, provided the goods are still in the hands of the purchaser or one having notice. The procedure is by affidavit, filed at the commencement of the suit, stating that the purchase money is unpaid. A writ of seizure issues, and the goods are taken. No bond required of plaintiff unless third person claims the property. 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, except where acquired or used in the business of a trader.

Limitations. 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. Action against administrator or executor on claim against person deceased limited to four years from date of qualification of such administrator or executor. Statute does not apply to suits on notes or evidences of debt of banks or other moneyed corporations circulating as money. An acknowledgment or new promise must be in writing. Statute does not run during fraudulent concealment, 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, nor in favor of persons who remove from the state.

Married Women retain their estate, common law disabilities of coverture abrogated; have capacity to make contracts and do all acts in reference to property. Dower and curtesy abolished. Husband and wife must join in conveying or encumbering homestead. (See also Husband and Wife and Descent.)

Mortgages and Trust Deeds do not take effect as to creditors or purchasers in good faith and without notice until they are delivered to the clerk for record; with power of sale are foreclosed by sale in pais; without power of sale, by suit in chancery court, and after foreclosure there is no redemption. (See Chattel Mortgages.)

Notaries. Have power to administer oaths, take acknowledgments and to protest notes and bills. (See Conveyances.)

Notes and Bills. Uniform Negotiable Instruments Law adopted and now operative. (See Holidays.)

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.

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.

Digitized for
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Taxes. Personal property is assessed once a year; real estate every two years, and taxes constitute a prior lien. Land delinquent sold on first Monday of April. Redemption within two years, on payment of all taxes, costs, 25 per cent damages, and 5 per cent on amount paid. 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. Money on deposit in banks and trust companies exempt from taxation. Corporations taxed as individuals.

Trust Companies. Provision for such companies with general Powers—to administer all trusts, make bonds and the like. (See Banks.)

Warehouse Receipts. (See Bills of Lading.)

Wills executed by anyone twenty-one years old, of sound mind. As to land, if not wholly written and subscribed by testator, 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. Nuncupative wills not to be established where value bequeathed exceeds $100. Soldiers and sailors in actual service may bequeath personalty free from statutory restrictions. No restriction upon the power to dispose of property by will except that religious or charitable trusts or bequests void. Provisions made for renouncing will by surviving husband or wife in certain cases. Probated in common form may be contested within two years. One who kills another cannot take under his will.

SYNOPSIS OF

THE LAWS OF MISSOURI

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by EDWARDS, KRAMER & EDWARDS, Suite 345, New York Life Bldg., Kansas City.

Acknowledgments. Acknowledgments of instruments affecting real estate may be before one of the following courts or officers. 1. Within this State, some court having a seal, or some judge, justice or clerk thereof, a notary public, or some justice of the peace of the county in which the real estate is situated. 2. Outside of this State and within the United States, any notary public, any court having a seal or the clerk of such court, or commissioner of deeds. 3. Without the United States, any court having a seal, the mayor or chief officer of any city or town having an official seal, any minister, consul or officer of the United States, or notary public having a seal. The official should certify that "before me personally appeared . . . . and....., his wife, to me known to be the persons described in, and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed." Persons engaged in military service without the U. S. may acknowledge any instrument requiring it, before any officer above the rank of lieutenant: in the naval service, before any officer above ensign. No paper is entitled to be recorded unless it is acknowledged.

Actions. There is in this State but one form of civil action the practice being under a code. A non-resident plaintiff must file the written undertaking of some resident for costs, or make a cash deposit.

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 six months after the grant of letters are preferred over those presented later. Claims not presented within one year from the granting of letters are barred. Letters are granted: 1. To the husband or wife. 2. To those entitled to distribution, or one or more of them. If after the expiration of thirty days after death of deceased, such persons do not, on five days' notice, appear and qualify, letters may be granted to any other person. Non-residents cannot be executors or administrators, nor may non-resident executors or administrators maintain an action in this State. Change in inheritance rates became effective August 15, 1921. In 1923 important changes were also made relative to administration of the estate of decedent non-residents and the limitation as to the time within which resident creditors may require administration.

Aliens. Aliens or alien corporations may not acquire, hold or own real estate except such as may be acquired by inheritance or in the ordinary course of justice in the collection of debts. Real estate acquired by an alien creditor at foreclosure sale must be disposed of within six years. This prohibition does not apply to cases where the right to hold and dispose of lands is acquired by treaty.

Arbitration. Parties to a controversy may submit the same to arbitrators, and their award be confirmed by a court and judgment rendered thereon. Arbitrations, settlements or adjustments of fire losses are to be had at the town, city or neighborhood where the fire loss occurs unless the insurrer and the assured agree on some other place.

Arrest. No person can be arrested under civil process. And there is no imprisonment for debt except upon a criminal prosecution for obtaining board and lodging by trickery, fraud or deceit.

Assignments. Voluntary assignments must be for the equal benefit of all the creditors of the assignor and are administered in the assignor from his debts. An assignment may be at common law or statutory. If statutory the assignee must file in the Circuit Court where the property is located, within fifteen days after the assignment, a complete inventory of the debtor's assets and must within three days after the filing of the deed of assignment, give bond with approved security. Claims of the State of Missouri are preferred, also wage claims earned within three months preceding the date of assignment. All sales of real or personal property conveyed by the Deed of Assignment must be sold under order of Court.

Attachments. The writ may issue when the debtor is a non-resident; or conceals himself so that the ordinary process of law cannot be served; or, has absconded or absented himself from his usual place of abode in this State, so that process cannot be served, or, is about to remove his property out of the State with intent to defraud, hinder, or delay his creditors; or, is about to remove out of the State and change his domicile; or, has fraudulently conveyed, concealed, or removed his property, or is about to do so, to hinder or delay his creditors; or, has failed to pay the price of any article which he was bound to pay for upon its delivery, or has fraudulently contracted the debt; or, where the cause of action accrued out of this State and the defendant has absconded or secretly removed his property into this State; or, where the damages sued for arise from the commission of a felony or misdemeanor or the seduction of a female; or, the defendant is a corporation whose chief office or place of business is out of this State. The plaintiff, his agent, or attorney must make affidavit to one or more of these grounds, and the plaintiff, except where the defendant is a non-resident, must give bond for double the amount of the debt. Attachment will lie for rent that is due and unpaid after demand therefor and will lie for rent whether due or not if it is to become due within one year thereafter, when the tenant intends to remove, is removing or within thirty days has removed his property from the rented premises. Plaintiff or his agent must give a bond in double the amount sued for to indemnify the defendant or any garnishee or interpleader for all damages caused by the attachment. The security or attachment bond must be by resident householders of the county where suit is brought and must be approved by the Court or the Clerk. If defendant is not found and his property be attached process by publication is obtained against him.

Banks are organized under a general law. The cash capital must not be less than $10,000 and in cities of 150,000 or more, not less than $100,000. The entire capital must be subscribed and paid up, except that when the capital is $10,000, one-half thereof may be paid up on organization, and the other half within one year. Directors must be residents of this State. The receipt of deposits with knowledge of the fact that the bank is in failing circumstancs, is punishable by fine or imprisonment, and officers and agents consenting to the creation of debts with such knowledge, are individually responsible therefor. Not more than 25 per cent of its capital stock must be loaned to any individual or corporation. Large powers of supervision and control are vested in the bank commissioner. Private bankers must have a paid-up capital of not less than $10,000, and in cities of 150,000 population or more, not less than $100,000.

Every firm or individual as well as every corporation that engages in the business of banking shall be subject to the strict supervision of the State Banking Department.

Conditional Sales of personal property, unless recorded, are void as to subsequent purchasers in good faith and creditors. Where such conditional sales provide for payments in installments or the sale is in the nature of a lease, or rental contract and title is retained by the vendor, the same is void as to purchasers in good faith and creditors unless evidenced by writing, executed, acknowledged and recorded as in case of chattel mortgages. Before the vendor or lessor however can retake such rented or leased personal property he must tender or refund to the purchaser or lessee all moneys he has received on account thereof after deducting reasonable compensation for the use of such property which shall in no case exceed 25% of the amount to be paid and also reasonable compensation for any damage done to the property.

Conveyances. A person may convey title to lands although not in possession, and although the same be in adverse possession. The signature of the grantor in a deed need not be attested by a subscribing witness. A deed by a natural person need not be under his seal. The corporate seal must be affixed to deeds of corporations. The use of the word "heirs" in a deed is not necessary to create a fee simple. The statute abolishes estates tail and converts an estate tail into a life estate for the first taker, with remainder in fee simple to the heirs of his body. The words "grant, bargain and sell" are employed in the granting clause of a warranty deed; by statute those words constitute express covenants that the grantor was seized of an indefeasible estate in fee simple; that the real estate was free from all incumbrances done or suffered by him or any person under whom he claims; and for further assurances of the title to be made by him and his heirs. Title, subsequently acquired by the grantor in a warranty deed, will immediately pass to the grantee without further conveyance. An estate of freehold may be made to commence in future, by deed. An interest in real estate, granted or devised to two or more persons, other than executors or trustees, or husband and wife, is a tenancy in common unless expressly declared to be a joint tenancy. A conveyance to husband and wife creates an estate by entireties as at common law.

Corporations are formed under general law. In the case of manufacturing and most other business corporations, the capital must be not less than $2,000 nor more than $50,000,000. One-half must be subscribed and actually paid up in money or property of the full value thereof, if part of the capital stock is paid in property, there must be an itemized description, the actual cash value of each item being shown. Part of the stock may be preferred, paying not to exceed 6 per cent annual dividends. Cumulative voting is permitted. Directors must not be less than three nor more than twenty-one; three of them must be citizens and residents of the State. A stockholder having paid for his stock in full is subject to no further liability. The bonded indebtedness cannot be increased nor the capital stock increased or diminished except with the consent of persons holding three-fourths of the amount in value of the stock. Two-thirds in value of the stock may apply to the circuit court for a decree for the winding up of the business.

Corporations owing no debts may also be dissolved by unanimous vote of all shareholders.

A corporation pays an annual franchise tax equal to one tenth of one per cent of the par value of its outstanding capital stock and surplus.

The General Assembly of 1913 enacted what is popularly known as a "blue sky law," placing under strict supervision of the Bank Commissioner, corporations and partnerships carrying on the business of selling and negotiating stocks, bonds and securities (a few securities excepted) and in 1923 the Missouri Securities Act was passed amplifying the Blue Sky Law.

Ample powers of visitation and summary action are conferred upon the Bank Commissioner, and penalties of fine and imprisonment imposed for violation of the law.

A foreign corporation must file in the office of the secretary of state a copy of its charter with a statement of the proportion of its capital stock invested in Missouri, and pay certain fees. It then receives a license to do business in the State. It must also maintain an office in the State. Its personal property in this State may not be incumbered to the injury of any creditor who is a citizen of this State, and no mortgage by a foreign corporation except a railroad or telegraph company, to secure a debt created in another State is effective as against any citizen of this State until its debts, due to resident citizens at the time of recording the mortgage, have been paid. A corporation failing to comply with these provisions is subject to a fine and cannot maintain a suit in a court of this State. A corporation of any country outside of the United States before being authorized to transact business in this State must have a public office in the State, where books shall be kept, showing in detail its assets and liabilities, the names and residences of its shareholders, officers, directors, and managers. None of these requirements apply to insurance companies.

All Shareholders are entitled to inspection of corporate books at reasonable hours. The officers and directors of banking corporations who assent to its receiving deposits, if said officers and directors have knowledge of the insolvent condition of said bank, become personally liable to depositors for all sums of money lost by reason of such deposit. It is unlawful for any corporation to adopt any name which has already been assumed by another corporation, nor can a corporation use the name of a firm of persons for corporate purposes without adding some word to designate the business which is to be carried on followed by the word "company" or "corporation." All corporations organized under the laws of the State must have a general office in the state and make annual reports to the Secretary of State.

Courts. Circuit Courts have original jurisdiction in all cases of law and equity and hold two or more terms in each year in each county. Jurisdiction of the settlement of estates of deceased persons is vested in a Probate Court in each county. Justices of the Peace have jurisdiction up to $250; in counties and cities having over 50,000 and less than 200,000 population up to $300; in townships having more than 200,000 and less than 400,000 population, up to $500; in cities of over 300,000 population up to $500; in cities of more than 300,000 in some cases $600. The State is divided into three districts, over each of which is a separate Court of Appeals, to which appeals lie from the Circuit Courts within said district, where the amount involved does not exceed $7,500 exclusive of costs. Where the amount involved

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

exceeds this sum, or the title to real estate or a constitutional question is raised, the Supreme Court has exclusive appellate jurisdiction.

By an Act approved April 30, 1925 it is provided that all municipal townships now containing 200,000 inhabitants and less than 600,000 and in which Justices of the Peace are paid a salary every action recognizable before Justices of the Peace against a defendant residing in such townships, shall be brought before some such salaried Justice of said township.

Days of Grace are abolished. (See Negotiable Instruments.)

Depositions. May be taken on notice of at least three days and one day additional for every fifty miles of the first 300 and beyond that one additional day for each 100 miles from the place of serving the notice. If taken outside of the State a commission issues from the court in which the suit is pending. They may be taken within the State by any judge, justice of the peace, notary public, clerk of a court, mayor or chief officer of a city or town having a seal of office; and if out of the State by any officer appointed by authority of the laws of this State to take depositions, a consul or commercial representative of the United States having a seal, or mayor of any city or town having a seal, or any judge, justice of the peace, or other judicial officer, or a notary public. They may be taken upon written interrogatories, but this is not customary. The names of the witnesses or of the officer need not be mentioned in the notice. Objections to the competency or relevancy of the testimony need not be noted, but can be first made when it is offered at the trial. Objections to the form of questions must be made or they are deemed to have been waived.

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 half as much as those of the whole blood. Lineal descendants in equal degree take per caput; 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, and the widow takes a like share of the estate of her husband on his death without lineal descendants. An illegitimate child inherits from its mother, and vice versa. An illegitimate child becomes legitimate if the parents intermarry.

Dower. Dower and curtesy in real estate no longer exist as at common law, but both are greatly modified or abolished by statute, for instance, if either spouse die without issue the survivor is entitled to one-half the real and personal estate of the decedent subject to debts. If the widow survives she is entitled to have, in addition, all the real and personal estate which came to her husband in right of the marriage, and all the personal property which came to her husband's possession with her written consent undisposed of at his death, free from his debts. If the husband leave a child or children or other descendants, the widow may elect to take a child's share in lieu of dower.

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.

Transcript of judgment of Justice of the Peace may be filed in the office of the Clerk of the Circuit Court and execution filed in the office of the Clerk of the Circuit Court and execution issued thereon as from the Court of record. Execution issued by Justice of the Peace may be levied on personal property only and said execution is a lien on the personal property of the debtor from the date of the delivery of the execution to the constable except as to exempt property or bona fide mortgaged property. The laws of Missouri do not provide for a stay of execution without the consent of the judgment creditor except of course by injunction.

Exemptions. The homestead of the head of a family is exempt in the country to the extent of 160 acres not exceeding in value $1,500, in cities of 40,000, eighteen square rods, not exceeding in value $3,000 in cities of 10,000, thirty square rods not exceeding in value $1,500, in towns of less than 10,000, ten acres, not exceeding in value $1,500. The exemption continues to the widow and to the children until their majority. There are also exempt, when owned by the head of a family, ten hogs, ten sheep, two cows, and certain farm implements; two work animals, spinning wheel, loom, and small quantity of hemp, flax, and wool; wearing apparel; $100 in household and kitchen furniture; mechanic's tools; provisions on hand for family use; Bibles and other books used in the family. Lawyers, physicians, ministers, and teachers have the right to select professional books in lieu of other property allowed to them and doctors may select medicines. In lieu of certain of the exempted articles any other property, not exceeding $300 in value, may be selected. No exemptions are allowed against taxes, or claims of blacksmiths, house servants, or common laborers to the amount of $90 provided suit is brought within a legal limit. Head of family is very liberally construed by the courts. An unmarried man keeping house with his sister has been entered to be the head of the family. There is also exempt from garnishment all wages of the last thirty days except 10%. (Exemptions)

Frauds and Perjuries. No executor or administrator is bound by his promise to pay any debt or damages out of his own estate, and no person is liable upon any agreement to answer for the debt, default, or miscarriage of another, or made in consideration of marriage, or for the sale of lands or any interest in or lease thereof for a longer time than one year, or on any agreement that is not to be performed within one year unless the agreement sued on, or a memorandum thereof is in writing signed by the party to be charged or his authorized agent; and no contract for the sale of lands by an agent is valid unless the authority of the agent is in writing. Every gift, conveyance, or assignment of or charge upon real or personal property made with intent to hinder, delay, or defraud creditors or defraud or deceive persons who shall purchase the same lands, is void against creditors and purchasers, prior and subsequent. The disposition of the larger part or the whole of a stock of merchandise pertaining to vendor's business otherwise than in the ordinary course of trade, is fraudulent and void as against creditors of the vendor, unless the vendee shall, at least seven days before the sale furnish to the creditors a statement of the consideration for the sale, the amount of the indebtedness of the vendor, and the names of his creditors. All creations of trust in lands must be in writing except those resulting by implication of law. The right of action given to any vendee on a violation of the Bulk Sales Law is limited to 90 days from the date of the delivery of such property to any such vendee.

Garnishment. Garnishees may be summoned under writs of attachment or execution. A garnishee may discharge himself by delivering up the property or paying the debt to the officer under order of court. Credits or property attached in the hands of a garnishee may be claimed by a third person, who may assert his title by interpleader. Not more than 10 per cent of the wages due for the last thirty days' service of the head of a family and resident of this State can be garnished. Public corporations and their officers are exempt from garnishment, as are also administrators and executors prior to an order of distribution.

A garnishee must answer under oath and if this answer is denied by plaintiff there is a trial of the issue. If the garnishee prevails he is allowed reasonable compensation for expenses, including attorneys fee but in any case the garnishee receives a small allowance for appearing in the cause. If effects are found in the hands of the garnishee, he must deliver them up or personal judgment will be entered against him.

Holidays. January 1, February 22, May 30, July 4, the first Monday of September, the 11th day of November, any general primary election day, any general state election day, any thanksgiving day appointed by the President or Governor, and December 25 are public holidays; and when any of them fall on Sunday, the next day is such holiday. February 12, known as "Lincoln Day," and October 12, known as "Columbus Day" are also holidays, but are not such as respects commercial paper. Negotiable instruments or written contracts executed on Sunday or legal holidays are not thereby made void but it has been held that there can be no recovery for labor performed on Sunday.

Husband and Wife. (See Married Women.)

Income Tax. A tax of one per centum is levied upon the annual income of individuals and corporations for the year 1922 and subsequent years, with provisions for certain deductions and exemptions.

Inheritance Tax. A tax is levied upon the estates of deceased persons varying from one to five per cent, depending on the relation of the beneficiary to the deceased, and exceeding those rates when the value of the property received by a beneficiary exceeds $20,000, with certain exemptions in favor of different classes of persons mentioned in the law.

Interest. Legal rate 6 per cent, but by agreement in writing any rate not exceeding 8 per cent. The legal rate is collectible on moneys after they become due; on written contracts or accounts, after due and demand made; on money recovered for the use of another and retained without the owner's knowledge. If usurious interest has been paid that part in excess of the legal rate is deemed payment and credited on the debt, the holder of which recovers the debt only with legal interest after deducting such payments, and costs are adjudged against him. The receipt or exaction of usurious interest upon a debt secured by lien upon personal property renders the lien invalid. Parties may contract that interest may be compounded, but not oftener than once a year. In Chattel loans not exceeding $500, that is, pawnbrokers loans, the rate of interest shall not exceed 1 percent per month.

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 an time within ten years from its rendition. Execution may issue at any time within ten years from the rendition of a judgment. When two or more judgments are rendered at the same term as between parties entitled to the judgments, the liens 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. A lien may be obtained in other counties than the one where the judgment was rendered by filing a certified copy of the judgment with the Clerk of the Circuit Court in said County. Judgments may also be assigned in writing on the margin of the record or other legal transfer but if such assignment is not entered on the margin of the record the judgment debtor will be protected if payment is made to the original creditor.

Liens. Statutory provisions exist for mechanics' liens, liens of keeping horses and other animals, liens of inn and boarding-house keepers, liens of contractors, material-men, and laborers against railroads. There are also statutory liens in favor of garages and automobile repair men under certain conditions.

Limitations. Actions must be commenced within ten years: 1. Upon any writing for the payment of money or property. 2. On any covenants of warranty or seizin contained in any deed. 3. For recovery of lands. 4. For relief not otherwise provided for. Within five years: 1. Upon contracts, express or implied, except judgments or decrees of court. 2. Upon a statutory liability other than a penalty or forfeiture. 3. Trespass. 4. Replevin, and for any other injury to the person or rights of another not arising on contract and not otherwise enumerated. 5. For relief on the ground of fraud. Within three years. 1. Against public officers for acts of official commission or omission. 2. For a penalty or forfeiture where the action is given to a party or a party and the State. Within two years: Actions for libel, slander, assault, battery, false imprisonment, or criminal conversation. Statute does not begin to run against a resident of this State who is absent at the time it accrues, until his return; if he depart after it accrues, the period of his absence is not counted. Acknowledgments or promises, to take a case from the operation of the statute, must be in writing. Judgments are presumed to be paid after ten years. A cause or action barred by the laws of the State in which it originated is barred in this State. Partial payment of principal or interest revives the debt.

Limited Partnership. May consist of one or more general and one or more special partners. Special partners contributing a specified amount in cash to the capital are not personally liable for the debts of the partnership and have no power to transact its business. A verified statement of the terms of the partnership must be filed with the recorder of the county and published. There can be no limited partnership for the business of insurance or banking.

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 cannot 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, except for necessaries of the family and for improvements made upon it.

Mortgages. Mortgages on real estate are executed like deeds. Husband and wife must join to bar dower or homestead, except to secure purchase money. 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 more days' public notice, as may be provided in the instrument. The trustee executes deed to the purchaser. There is no redemption from sale unless the holder of the debt is the purchaser, in which case the debtor may redeem within one year if he gives written notice at the sale or within the preceding ten days of his purpose, and within twenty days after sale give security for payment of interest to accrue within the year and all interest on prior incumbrances paid by the creditor and taxes and assessments accruing during the year. Evidences of debt secured by mortgage or deed of trust must be produced to the recorder when satisfaction is entered. No foreign corporation or individual may act as trustee in any deed of trust unless there be named as co-trustee a Missouri corporation or individual citizen of this state, and the resident trustee must be a party plaintiff in an action to foreclose.

Chattel mortgages are invalid except as between the parties unless possession of the property be taken and retained by the mortgagee

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

or the mortgage be acknowledged and recorded in the county of the mortgagor in the same manner as conveyances of real estate, or unless the mortgage or a copy thereof be filed on the office of the recorder of the county of the mortgagor, or, where he is a non-resident of the State, then in the office of the recorder of the county in which the property is situated. Every such mortgage ceases to be valid after the expiration of five years from the filing of the same. In case of the death of the mortgagor there shall be no foreclosure of real estate for nine months from said date nor on personal property for four months.

Negotiable Instruments. The General Assembly of this State has 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 adopted by many other states in accordance with the recommendation of the American Bar Association. It became effective in Missouri, June 16, 1905.

Probate Law. (See Administration of Estates.)

Protest. (See Negotiable Instruments.)

Replevin. Goods or chattels wrongfully taken or retained may be replevied by the owner or party entitled to possession. Affidavit must be filed and bond in double the value of the property given. In certain cases defendant may retain possession of the property by giving a bond in double its value. If plaintiff fail in his suit, defendant recovers judgment against plaintiff and the sureties on the bond for the value of the property and damages. Replevin action can be brought without giving bond but the plaintiff acquires possession of the property only on final judgments in his favor.

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. If not paid before the last day of December a penalty of one per cent per month is added as interest until paid. State and county taxes for each year are a lien upon the real etate from the first day of June of the preceding year. Delinquent state and county taxes are collected by suit. By Sec. 13149, Statutes of 1919, in counties containing cities of over 200,000 and less than 700,000 county and state taxes are due June 1st and become delinquent November 1st, with one per cent per month penalty thereafter. 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. There is no redemption from a sale under a judgment for state and county taxes. Redemption is usually allowed in a sale for city taxes under the provisions of the particular charter. The state imposes collateral inheritance tax and income tax. Officers are not to divulge any information relative to any income tax returns.

Wages. (See Garnishments; Exemptions.)

Warehouse Receipts. Missouri has adopted the uniform warehouse receipts law. Warehouse receipts must contain the following terms: location of warehouse, date of issue, serial number or receipts, statement as to whether chattels will be delivered to bearer or to a specific person or to his order, rate of storage charge, description of goods, signature of warehouseman; if the ownership is on the part of the warehouseman, such fact must be shown in receipt, statement of amount of advance under receipt for which lien is claimed. Non-negotiable receipt must be plainly marked "not Negotiable."

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 twenty-one 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 of children, in case or their death, are not named or provided for in the will, the testator is deemed to have died intestate as to such child or children or their descendants. 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 two 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

Revised by CHARLES E. PEW, Attorney at Law, 5 and 7 Union Bank Bldg., Helena.

Abstractors. Must give $5,000 bond to state and shall receive certificate from State Treasurer authorizing him to do business. Abstract furnished by authorized abstracter admitted in court has prima facie evidence of contents.

Acknowledgments of instruments may be taken in this State. 1. Before supreme court justice, district judge, justice of the peace, clerk of any court of record, county clerk, notary public, or U. S. Commissioner. 2. Outside Montana in the United States. Before the justice, judge or clerk of any court of record of the United States or any state or territory; a commissioner appointed by the governor for that purpose, a notary public, or any other officer authorized to take acknowledgments. 3. Outside United States before minister, commissioner or charge d'affairs, consul, vice-consul or consular agent of the United States, a judge of court of record, commissioner appointed by governor or notary public. In all cases acknowledgment must be taken within jurisdiction of officer taking.

Must be in substantially following form: "State of ..... county of .....s. s. On this .....day of .... 19..before (name of quality of officer) personally appeared..... known to me (or proved on oath of .....to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same." Same for married women. In case of corporation same to star, then "president or vice-president (or secretary or assistant secretary) of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same," and in case of attorney in fact, "whose name is subscribed to the within instrument as 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." Outside the county must be accompanied by certificate of county clerk.

Administration of Estate is had in district courts. Notice to creditors published four weeks. Claims not presented in four months after first notice, if estate $10,000 or less, or ten months if over $10,000, are barred.

Letters of administration granted to: 1. Surviving husband or wife or competent appointee. 2. Child. 3. Father or mother. 4. Brother. 5. Sister. 6. Grandchild. 7. Next of kin who inherits. 8. Public administrator. 9. Creditor. 10. Any person legally competent. When several claim right and equally entitled, court appoints, preferring males to females and whole blood to half blood.

Affidavits may be taken or oaths administered before any judicial officer, clerk of any court, county clerk or notary public in this State; in any other state before a commissioner appointed by the governor, notary public, or judge or clerk of any court of record having a seal; in a foreign country before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or judge of a court of record having a seal.

When taken before a judge in any other state or foreign country, the existence of the court, signature and official character of the judge must be certified by the clerk of such court, under its seal.

Aliens and Denizens have same right as citizens to acquire, use and dispose of mining property and real estate in connection therewith, except that aliens not eligible to citizenship may not acquire or hold land (Japanese exclusion).

Arbitration. Any controversy except over title to real property may be submitted to arbitration by a written agreement to that effect filed in court and may be made an order of court. When made an order of court is irrevocable; otherwise it is revocable at any time before award. An agreement to arbitrate cannot be specifically enforced.

Arrest. Defendant in a civil action may be arrested when about to leave the State or conceal his property, with intent to defraud creditors, and in certain other action where fraud, wilful injury, or wilful violation of duty, or wrongful conversion of money or property by a public officer or a fiduciary, or for fine or penalty.

Assignments. Voluntary assignments for benefit or creditors allowed if without conditional preference, not coercive, impartial, without reservation for fraudulent benefit of assignor, and does not confer power upon assignee to delay execution of the trust, nor exempt him from liability for negligence or misconduct. Is under partial supervision of the district court.

Attachments. Writ of may be had at the time of issuing summons or any time thereafter in actions upon unsecured contracts express or implied for direct payment of money, or if contracts originally secured, when security has become worthless without plaintiff's fault. Is issued upon affidavit on behalf of plaintiff, after filing bond in double amount of claim, if under $1,000; if over, in amount of claim; bond never to exceed $10,000. Any property, real or personal, or debt due from or money or personal property held by third person, including judgments, may be attached. May be issued upon debt not due if debtor leaving state or disposing of property to defraud creditors.

Banks and Trust Companies. *Note: Montana has an elaborate banking code. The following synopsis gives an idea of the character of this legislation, but the law itself should be referred to before acting in any matter coming within its provisions.*

"Bank" includes Commercial Banks, Savings Banks, Trust Companies, and Investment Companies.

Three or more persons may organize under supervision of Superintendent of Banks, whose refusal to issue certificate shall be conclusive.

Commercial Bank shall have at least $20,000 capital fully paid and deposited in Montana banks. Other banks shall have at least $100,000 capital and not over $10,000,000, at least $100,000 subscribed and fully paid and deposited in Montana banks.

Par value of shares $100 and no preferred stock.

Director must own at least $1,000 par value of unincumbered stock.

Stockholders individually liable to extent of par value of stock in addition to amount invested in such stock. Executor, administrator, guardian or trustee not personally liable but property of beneficiary is liable.

Delivery of certificate to bona fide purchaser for value with written transfer or written power to sell, assign and transfer the same passes title as against subsequent purchaser or encumbrancer, but dividends may be paid to record owner until transfer recorded in books of corporation.

At least one-half of amount paid in capital of Savings Bank and one-half of deposits must be invested in bonds and similar specified securities, no loan greater than $10,000.

May hold property necessary in its business or acquired in good faith through foreclosure of securities or collection of debts.

Trust and Investment Companies given broader power in investments than Commercial and Savings Banks.

May join National Reserve.

No person, firm or corporation, domestic or foreign, not having certificate of superintendent of the banks authorizing to do business, may advertise banking business

Foreign corporation not engaged in banking business may lend money in state, if it has complied with laws pertaining to foreign corporations.

Directors may declare and pay dividends to stockholders out of profits, but must carry at least one-fifth net profits to surplus until the surplus amount to 20 per cent of paid up capital.

Bank may invest not more than one-tenth of capital and surplus in safe deposit department.

Bank shall not invest capital, surplus, or deposits, in or loan money upon its stock except to prevent loss.

Shall not sell securities to officers or employees. Shall not underwrite bond issue except United States, State and Municipal bonds of Montana, in excess of 10 per cent of its assets.

May not acquire stock of any corporation unless necessary to protect previous debt.

Commercial bank shall not loan on real estate except on first lien not exceeding 50 per cent market value of property and not more than 35 per cent of assets shall be so loaned; but this does not limit right to take any security for previous debt.

Deposits by two persons payable to either or survivor may be paid to either even after death of the other.

Every bank, except reserve bank, shall keep reserve of 10 per cent of deposit liabilities, and reserve bank shall keep 15 per cent. Solvent bank with capital and surplus $100,000 may be desginated by Superintendent of Banks as Reserve Agent for Montana State Banks.

No bank shall become indebted in excess of paid up capital and surplus without written authority from Superintendent of Banks.

State Bank may change to National Bank and *vice versa*.

Not liable for forged or raised check unless notified thereof in one year after return of check to depositor

Liable only for actual damage for non-payment of check through mistake without malice.

Office of Superintendent of Banks created, who performs duties formerly imposed on State Auditor.

Contracts. Contracts of conditional sale retaining title in vendor must be filed with county clerk or are void as to bona fide purchasers, mortgages or attaching creditors prior to filing. In case of default vendor may recover property in claim and delivery proceedings or foreclose as in case of chattel mortgage.

Conveyances. Title to property of any kind (except a mere possibility not coupled with an interest), including a right of re-entry for breach of condition subsequent, and property in the adverse possession of another, may be transferred. Deed to several persons, except to executors and trustees, creates tenancy in common, unless expressly declared a joint tenancy in the deed. The fee simple title passes by a grant, unless expressly limited to a less title in the deed. Covenants that the grantor has made no previous deed to any other per-

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

son, and that the premises are free from encumbrance by the grantor or any one claiming under him are implied from use of word "grant."

A married woman joining with her husband in any instruments affecting real property is bound thereby the same as though single if duly acknowledged by her. Instruments affecting real property may, if acknowledged, be recorded, and such record imparts notice to the world. (See Acknowledgments.)

Corporations are found under the general statute, except banking, insurance and railroad corporations, and corporations not for profit, which are governed by special laws. Stockholders have one vote for each share, may vote in person or by proxy, and may cumulate votes in director elections. Articles of incorporations filed in county where principal office located, and copy filed with secretary of State, may hold only necessary real estate; from three to thirteen directors, who may be empowered to make by-laws; may classify directors; control business; stock issued for money or property; stock liability limited to unpaid portion, directors assenting to creation of debts beyond subscribed capital stock or making dividends out of capital stock are jointly and severally liable therefor; stockholder may examine books; written transfer or power of attorney to sell, and delivery of certificate passes title, between parties and against creditors; may be attached on books of corporation. Every domestic corporation having a capital stock must file report in county clerk's office, within twenty days after December 31st of each year, showing amount of capital stock, amount paid in cash, and amount paid in property, amount of existing debts, and names and addresses of directors, president, vice-president, general manager and secretary; directors neglecting to file are jointly and severally liable for debts existing during failure to file, director may exonerate himself by filing within ten days after default affidavit showing that during the twenty days he asked president or sufficient directors to file, and that default is not due to his neglect. Subject to State tax of one per cent on net income over $2,500.

Foreign corporations, except insurance companies and corporations otherwise provided for, may do business after filing with secretary of state and in county where intend to do business, copy of charter and verified statement of president and secretary, showing name, capital stock, amount paid in money or property, assets and of what consist, and their actual cash value, and amount of liabilities; also a consent to be sued and appointment of agent for service of process and acceptance of same. Secretary of State now collects fees upon proportion of capital employed in Montana. If capital increased or diminished must file certificate thereof with secretary of state and county clerk and refusal to do so forfeits right to do business in State. Must within two months after April 1st, file report like verified statement just mentioned, in county clerk's office, and copy with secretary of state. Can have no greater rights or privileges than domestic corporations.

Foreign Corporations doing business in this State are made subject to the jurisdiction of the courts of this State the same as domestic corporations and their stock is made attachable in this State. May be served, if no officer, agent or other representative can be found in Montana, by leaving process with Secretary of State.

Foreign incorporations subject to State tax of one per cent on net income over $2,500 on business done in Montana.

Courts. District courts have original jurisdiction in law and equity where over $50 involved; have probate and criminal jurisdiction. City police courts of petty criminal jurisdiction. Justices of peace limited to $300, petty criminal cases; cannot try title to land, nor questions of constitutionality. Appeals lie from justice to district and from district to supreme court. Supreme court appellate court of last resort, except has original jurisdiction in applications for habeas corpus and similar writs.

Days of Grace. None.

Depositions of resident may be taken when witness is a party in interest, or resides out of the county, or is about to leave and will probably continue absent, or is too infirm to attend; or the testimony is to be used on a motion, or when witness is only one who can establish a material fact and his presence cannot be procured at the trial. Examinations may be upon oral questions or by agreement upon written interrogatories. In case of non-resident within United States, judge may issue commission upon five days' notice, if parties do not agree upon person, to any judge, or justice or commissioner. If out of United States, may be directed to a minister, ambassador, consul, vice-consul or consular agent of the United States in such country, or to such person as may be agreed upon. Examination of non-residents unless otherwise agreed, must be by written interrogatories.

Descent. Intestates' real and personal property, subject to payment of debts, descends as follows: If widow or surviving husband and one child, half to each; if widow or surviving husband, and more than one child or one child and lawful issue of one or more deceased child, one-third to husband or wife and two-thirds to such children and issue per stirpes; if no child living, two-thirds to lineal descendants, equally if of same degree, if not, per stirpes; if issue and no husband or wife, whose estate to issue if such issue consists of more than one child living and lawful issue of deceased child or children, then in equal shares to living children and issue of deceased children per stirpes; if no issue, one-half to husband or wife and one-half to father and mother in equal shares, or if either be dead, the whole half goes to the survivor. If no father or mother one-half in equal shares to brothers and sisters or their children per stirpes. If no issue nor husband or wife, entire estate to father and mother equally, or to survivor. If no issue father, mother, husband, nor wife, in equal shares to brothers and sisters and to children of any deceased brother or sister per stirpes. If surviving husband or wife, and neither issue father, mother, brother, nor sister, entire estate to husband or wife; if none of above mentioned, to next of kin in equal degree, claiming through nearest ancestor; if leaves more than one child, or one and the issue of one or more deceased children, and any such child die unmarried under age, his share goes to children of same parent or their issue per stirpes. If no husband, wife or kindred, the property escheats to State. Illegitimate child is heir of person who acknowledges himself, in writing before a competent witness, to be its father and is an heir of his mother; if parents intermarry, is legitimatized.

Dower. Curtesy abolished. Wife endowed of third of lands owned by husband during marriage. Equitable estates and contracts included. No dower in lands mortgaged for purchase price as against mortgagee, not in lands conveyed to him by way of mortgage unless be acquire absolute title during lifetime. Devise or bequest bars widow's dower unless otherwise expressed in will, but she may elect between devise or bequest and dower, within one year in writing. If husband die leaving no children nor descendants of children, widow may have, absolutely, one-half of all his estate after payment of debts, if she elect within two months after payment of debts. A woman may be barred of dower by jointure with her assent before marriage, consisting of freehold in lands of life, at least, beginning at death of husband. Dower is not affected by wife's deed.

Execution unless stayed by order of court, may issue at once upon rendition of judgment; becomes lien on personalty, upon seizure by officer holding writ. All property sold to highest bidder. Defendant or creditor may redeem from sale of real estate within year, or sixty days after previous redemption.

Exemptions. To head of family, homestead to value of $2,500, and descends as such to surviving wife or husband and children. Head of family allowed wearing apparel, chairs, tables, books, at $200, all necessary household goods and certain domestic animals and provisions for three months; forty-five days earnings exempt where necessary for support of family, except one-half such earnings may be taken for debts for necessaries. Generally, tools and implements of trade, libraries, etc., of professional men who are heads of families, are exempt.

Fraud. It is criminal fraud to attempt to obtain insurance money wrongfully; or fraudulently destroy insured property; to issue, sell, transfer or pledge any false, fraudulent or simulated stock certificate or evidence of shares of any corporation, or any officer to sign any such certificate; unauthorized use of another's name in selling stock; for a director, officer, or agent of corporation to publish false report of its affairs; to falsely represent one's self as competent to sell or mortgage real estate when signature of husband or wife is necessary; to get money or property by false representations as to wealth or mercantile character; 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 wilfully certify any false acknowledgment with intent to defraud; to issue any false warehouse receipts 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, Statute of. Agreement of executor or administrator to answer for obligation of decedent out of his own estate; agreement not to be performed in one year; promise to answer for obligation of another, unless it is made an original obligation of promissory; an agreement upon consideration of marriage, except mutual promise to marry; for sale of personalty at a price of over $200, unless part of price paid or part of goods accepted, except at auction sale when auctioneer enter sale in sale book; lease for over one year; for sale of realty, or authorizing broker or agent to sell land for compensation; is void unless in writing signed by party to be charged or his agent duly authorized (in writing in case of agreements affecting real estate). Every transfer of property or charge thereon made, every obligation incurred, every judicial proceeding taken, and every act performed, with intent to delay or defraud any creditor, or other person, of his demands, is void against all creditors of the debtor and their representatives or successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than debtor. All declarations of trust in lands shall be in writing, except resulting trusts or trusts created by implication or operation of law.

Holidays. Whenever an act of a secular nature is 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. Such holidays are: Every Sunday, the first day of January, the 12th day of February, 22nd day of February, 30th day of May, 4th day of July, first Monday in September, 12th day of October, the 11th day of November (Armistice Day), Thanksgiving Day, the 25th day of December, and every day of a general State election.

Husband and wife. Husband must support wife if able; if not, she must assist; husband has no curtesy; wife has dower; neither can be excluded from others dwelling; may contract with each other, or any other persons, the same as though unmarried; cannot alter legal relation by contract, except may agree to immediate separation, mutual consent being sufficient consideration; may hold property jointly or in common; wife may sue and defend alone; all property of wife is her separate property, and she can convey, or execute power of attorney thereon without husband's consent. Her deed must be acknowledged. Filing inventory of her personal property exempts same from claims against husband, except for necessaries for herself and her children. Wife must support husband out of her property if he is infirm. Wife may dispose of her property by will, except that such will must not, without his written consent, deprive husband of over two-thirds of her real estate or two-thirds of her personal property; wife may make contract, etc., the same as though single. If husband neglect to support his wife, bills for necessaries sold her can be collected from him, but not when separated by consent, unless support stipulated in such agreement.

Interest. Eight per cent on judgments and damages. In other cases 8 per cent in absence of agreement. May contract for not more than 10 per cent per annum.

Judgment of courts of record (including federal courts of Montana if transcript of such judgment if filed in district court) are lien on realty in county for six years; realty in another county becomes subject to lien upon filing of transcript of judgment in such county. Abstract of justice court judgment becomes lien on realty in any county where filed in district court.

Liens. Mechanics and material men have lien upon structure or property upon which labor performed or for which material furnished. Must file notice and affidavit in County Clerk's office within ninety days after last work performed, or material furnished. Foreclosure must be within one year after filing. Attorney's fees allowed successful plaintiff or defendant in foreclosure suit.

In insolvency proceedings employees have lien for sixty days' services not exceeding $200. Attorney's fees allowed successful party as above.

Hotel, boarding and lodging-house keepers have lien upon baggage and upon other valuable property of guests brought into hostelry. Such lien foreclosed by four weeks' publication and sale.

Agisters lien and lien for service in improvement of personal property allowed. Seed grain lien allowed, not exceeding 700 bushels. Prior to all other liens. Verified statement of lien must be filed with the County Clerk and Recorder. Thresher men allowed lien on grain threshed; second only to seed lien. Verified claim must be filed as in case of seed lien.

Loggers have lien on logs. Lien must be verified and recorded.

Limitation of Actions. Within 10 years. (1) Action by State for or in respect to real property or the issues and profits thereof. No person claiming under patent or grant from State may sue unless State could have sued had patent or grant not issued. (2) Action for recovery of real property or possession thereof. (3) Action for recovery of dower. Time runs from death of husband. (4) Action arising out of title to real property or rents or profits thereof. (5) Action upon judgment or decree of Court of Record. (6) Action for mesne profits of real property. (7) Action to redeem where mortgage in possession.

Within 8 years. (1) Action upon contract, obligation or liability in writing.

Within 5 years. (1) Action upon contract, account or promise not in writing. (2) Action to establish lost, concealed, or destroyed will. Time runs from discovery of facts upon which validity depends. (3) Action upon judgment or decree of Court not of record. (4) Actions not otherwise provided for.

Within 3 years. (1) Action against sheriff, coroner, or constable for official actions or omissions not including action for escape. (2) Action for damages for wrongful death. (3) Action on obligation or liability not in writing, other than a contract, account or promise. (4) Action upon forged or altered check paid by bank.

Within 2 years. (1) Action upon statute for penalty or for forfeiture by individual or individual and the State, except where statute otherwise provides. (2) Action upon statute or undertaking in criminal action for forfeiture or penalty to the State. (3) Action for libel, slander, assault, battery, false imprisonment or seduction. (4) Action upon statutory liability other than penalty or forfeiture. (5) Action for injury to or waste or trespass upon real property. In case of underground work on mining claims, time runs from discovery of facts. (6) Action for taking, detaining or injuring goods or chattels, and recovery of personal property. (7) Action for fraud or mistake. Time runs from discovery of facts. (8) Action for killing or injuring stock by railroad. (9) Action to annual tax deed.

Within 1 year. (1) Action against sheriff or other officer for escape. (2) Action against municipality for damages or injuries by mob or riot, or for violation of ordinance. (3) Action against officer account seizure of property as tax collector. (4) Action for foreclosure of mechanic's lien.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Within 6 months. (1) Action to recover stock sold for delinquent assessment. (2) Action against County upon claims rejected by county commissioners. (3) Action against City by policeman for salary.

Within 60 days. (1) Action for restoration to office. Suit to recover salary within fifteen days after restoration. (2) Action to restrain the issuance and sale of municipal, county or school district bonds or for restraining levy and collection of taxes on account of defect, irregularity or informality in notice or holding election on bond issue. In no case does statute run during absence of defendant from State.

Loans. Farmers loan department established.

Married Women. (See Husband and Wife.)

Mortgages of real estate are executed same as deeds. Husband and wife must join to bar dower or homestead, except purchase money mortgages. Non-judicial sale under power valid. Lien good for eight years after maturity of debt, and may be renewed by affidavit for eight years more.

Chattel mortgage must be acknowledged by mortgagor and accompanied by affidavit of mortgagee that same is made in good faith and not to hinder, delay or defraud creditors, and by receipt from mortgagor showing receipt by him of copy at time of execution. Valid as against creditors or subsequent purchaser or incumbrancer from time of filing with Clerk and Recorder in County where properly situated. Lien continues two years and sixty days if not renewed. May be renewed within sixty days after two years by affidavit stating amount due, alleging good faith, etc. Renewal extends time for three years from date of filing renewal.

Chattel mortgaged property may be attached after first depositing with County Treasurer amount due mortgagee. Growing crops next maturing may be mortgaged. If mortgage so provides may be foreclosed by sheriff. Assignment of mortgage cannot be recorded unless it contains assignee's postoffice address at his place of residence.

Negotiable Instruments. Must be payable in money and must contain an unconditional promise to pay a sum certain on demand or at a fixed or determinable future time; must be payable to order or to bearer; may be in installments and contain provision that on any default the whole shall become due; with exchange fixed or current rate, interest and attorney's fees for collection may authorize sale of collaterals and confession of judgment; if it reads "I promise to pay" all signers are jointly and severally liable; may be payable at fixed time after date or sight, or after specified certain event, but not upon a contingency; need not specify value given nor place where drawn or payable; if issued, accepted, or endorsed when overdue it is payable on demand; may be payable to two or more payees jointly, or one or more of several payees; absence or failure of consideration a defense against one not a holder in due course and partial failure a defense pro tanto. One not a party to instrument placing a signature in blank before delivery becomes an endorser. Every endorser engages that on due presentment it shall be honored or that he will pay the amount to holder or any subsequent endorser who may be compelled to pay; no days of grace; when maturity falls on Sunday or holiday payment is due on next business day; if due on Saturday must be presented on next business day, but if payable on demand holder may present same before noon on Saturday. Fraud and circumvention in procuring execution of instrument is a defense against any holder.

Presentment. It is not necessary to charge one primarily liable if payable at special place; ability and willingness to pay it there at maturity is equivalent to a tender, if not on demand it must be presented on day it falls due, if on demand then within a reasonable time after its issue, except a bill of exchange must be presented within reasonable time after its last negotiation.

Alterations. Fraudulent or material, do not affect original instrument in hands of innocent holder in due course.

Acceptance. Unconditional promise in writing to accept a bill before or after drawn is good in favor of all who take it upon faith thereof for value. The holder may decline a qualified acceptance and treat the bill as dishonored; if he takes qualified acceptance drawer and endorsers are discharged, unless they consent thereto.

Protest of foreign bills may be made by notary public or by any respectable resident of the place in presence of two or more credible witnesses; bill of exchange does not operate to assign funds in hands of drawee and he is not liable unless he accepts.

Promissory Note. Must be unconditional promise in writing to pay on demand or at fixed or determinable time a sum certain in money to order or bearer, and where drawn to maker's own order is not complete until endorsed by him; may be in installments.

A Check is a bill of exchange on a bank payable on demand; must be presented within reasonable time after issue and if dishonored notice must be given or drawer is discharged to the extent of loss caused by delay; does not operate to assign any part of drawer's funds in bank and bank is not liable unless it accepts or certifies. If holder has check certified the drawer and endorsers are discharged.

The present negotiable instrument law of Montana consisting of 198 sections went into force March 7, 1903. Its provisions do not apply to instruments made prior thereto. The act so materially changes the law in this State as to suggest the propriety of special examination in any doubtful case

This law is nearly if not quite identical with that now in force in New York, Illinois, and other states.

Replevin. The plaintiff in an action to recover possession of personal property may replevy the same at the time of issuing summons or at any time before answer, upon making affidavit showing that the plaintiff is the owner of the property or entitled to possession thereof, that it is wrongfully detained, and has not been taken for a tax, assessment or fine pursuant to a statute or seized under an attachment or an execution against the plaintiff, or if so seized that it is exempt, and also stating the actual value of the property. A demand for the delivery of the property should be indorsed upon the affidavit and an undertaking in double the value of the property must be given. The defendant has two days in which to except to plaintiff's sureties. or he may require the return of the property by giving an undertaking in double the value of the property. If such undertaking is not given within five days from the replevy the property must be turned over to the plaintiff.

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. One half taxes payable November 30, and one half payable May 31, next following. If first half not paid whole tax becomes delinquent after November 30, 5 per cent added as penalty, and interest at 1 per cent per month. 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 ot 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. Property assessed for the following percentages of full and true value: Net proceeds of mines, 100 per cent; gross proceeds of mines of over $100,000, per year; 2 cents per gallon on gasoline or distillates; all personal property for domestic and agricultural use and motor driven cars, 20 per cent; Livestock, agricultural products and merchandise, 33⅓ per cent; real property and manufacturing and mining machinery, 30 per cent; credits, except credits secured by mortgage, which are exempt, 7 per cent; National Bank shares and Bank capital and other property, 40 per cent. When property bidi n by County, Treasurer may assign certificate to any person paying the taxes. Redemption may be made in thirty-six months, or at any time before deed applied for. Action to annul tax deed must be brought in two years after date of issuance.

Elaborate inheritance law recently enacted. Tax runs from one per cent to as high as 15 per cent. Exemptions from $10,000 for widow and $2,000 to each child down to $100 for stranger. Provisions of law too elaborate and complicated to make digest satisfactory.

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 & YOUNG, Attorneys at Law, Suite 619-629 Omaha National Bank Bldg., Omaha.
(See Card in Attorneys' List.)

Acknowledgments. (See Deeds, Notary Public) may be made in this State before a notary, judge or clerk of any court, justice of the peace, county clerk or deputy, register of deeds or deputy, deputy clerk of district or county court in name of his principal, 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, and must be before some court of record or clerk or officer holding seal thereof, or a commissioner of deeds appointed by the governor of this State for that purpose, or notary public, or justice of peace, if before justice of the peace, acknowledgment must be accompanied by certificate of his official character under hand of clerk of some court of record, to which the seal of such court shall be affixed. 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 d'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. Acknowledgments, attestations, and affidavits before U. S. army officers in foreign places are valid of officer authorized by laws of United States.

Actions. Must be brought by real party in interest, except as to administrator, trustee, etc. However, assignees of choses in action assigned for purpose of collection may sue on any claim assigned in writing; but such assignees must give security for costs. Non-resident plaintiff must give security for costs.

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 make report within two weeks. Personalty is disposed of under direction of the county court, but to sell real estate, license must be obtained from the district court. Debts of decedent are a lien upon all real estate. If no administration, within two years any heir of deceased or any person having acquired real estate from deceased or heirs may obtain from county court determination of heirs of deceased degree of kinship and right of descent of real property of deceased.

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 reciting authority of such officer.

Aliens. Non-resident aliens and foreign corporations may not own or hold real estate in Nebraska, or any interest greater than a five-year leasehold, but the widows and heirs of such aliens who held lands prior to March 15, 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. Resident aliens may acquire title by devise or descent only, but are required to sell and convey such property within five years from date of acquiring title. These provisions do not apply to railroads, telephone, and telegraph companies, land necessary for the purpose of erecting and maintaining manufacturing establishments, nor to real estate within the corporate limits of cities and towns. Only persons possessed of full citizenship are eligible to vote or to hold public office or official position.

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 verdict. Judgment may then be entered and execution issued.

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

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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 deed's office, and within thirty days it shall be recorded in any other county where property conveyed be situated. A creditor may file and prove a claim and concurrently therewith, may pursue a separate remedy against the assignors for the collection of such claim. Conveyances, preferences, payments, pledges or transfers of property made by an insolvent debtor in contemplation of such insolvency, within thirty days prior to making an assignment, are void, except that the assignor may pay or secure clerks' or servants' wages, not exceeding $100 to any one person, and may pay or secure any debt created within nine months prior to that time and may secure any debt contracted simultaneously with the giving of such security.

Assignments of wages of head of family void unless executed and acknowledged by husband and wife.

Attachments. The plaintiff at or after 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 county of his residence to avoid the service of summons. 4. So conceals himself that a summons cannot 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 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 but in such cases no attachment can be had for claim other than debt or demand arising upon contract, judgment or decree, unless plaintiff has been bonafide resident of state for six months preceding filing of petition. In all other cases plaintiff must give an undertaking in double the amount of his claim and in no case less than $50. If property cannot be seized by the officer it may be reached by garnishment process. To obtain attachment in an action not founded on contract, original petition must be presented to judge of supreme, district or county court who shall make an allowance thereon of the amount in value of the property that may be attached, and the amount of bond, if any, to be given by plaintiff.

Banking. Only National banks and state banks which are incorporated under the laws of Nebraska, can transact banking business here. Department of Trade and Commerce has general supervision and control of all state banks. Every state bank must obtain charter from this department. Department appoints examiners who investigate affairs of each bank. After each examination bank must pay to state treasurer fee of $25 or more, according to capital. Savings banks must have at least $15,000 capital; if in city of 50,000 to 100,000, $35,000; 100,000 or more, $75,000. Other banks must have capital as follows: Minimum, $25,000; 2,000 to 5,000, $35,000; 5,000 to 25,000, $50,000; 25,000 to 100,000, $100,000; 100,000 or more, $200,000. Such capital shall be in money, credits, national, state, county or municipal bonds, 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 or the furniture and fixtures alone 10 per cent of the national, state, county and municipal bonds one-half of the paid-up capital. Before commencing business the bank shall make a detailed statement of the proposed business to the Department of Trade and Commerce which, after approval, shall issue a charter. Every bank must make at least quarterly detailed reports under oath, showing the amount loaned upon bonds and mortgages, amount loaned upon notes, bills of exchange, overdrafts, and other securities, with the actual market value thereof, the amount of rediscounts and of commercial paper past due, the amount invested in real estate, at cost, the amount of cash on hand and on deposit in banks or trust companies, with their names and the amount deposited in each, and the amount of all other assets, together with such other information as the banking board may require. A summary of such report must be published in some local newspaper and proof of such publication transmitted to the department of trade and commence and such department 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; or to loan to a director 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. 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. A guaranty fund is provided by assessments on all state banks based upon the average daily deposits. Department of Trade and Commerce has authority to take possession of banks and to place them in charge of Guarantee Fund Commission for administration or liquidation. Claims of depositors, not otherwise secured, and of holders of exchange have priority over all other claims, except taxes, and, subject to taxes, are first lien on all assets of bank when bank closed. Bank other than savings bank shall not permit loans and investments, exclusive of reserve and banking house and fixtures to exceed fifteen times amount of capital and surplus. Loan to any single corporation, firm or individual may not exceed twenty per cent of bank's paid-up capital and surplus. All state banks in cities of over 25,000 must keep a reserve of 20 per cent, one-fifth of cash reserve may be in U. S. government bonds at their market value. Rediscounts and bills payable must not exceed paid-up capital and surplus without consent of Department of Trade and Commerce. State banks and trust companies may become members of federal reserve banks. Where bank becomes a member of the Federal Reserve system it may incur liabilities and have the same privilege as to rediscounts and bills payable as Federal Reserve banks. It is unlawful to bid or solicit for purchase of bank stock above par until banking-corporation organized and actually engaged in banking business. Every bank must have reserve of 15 per cent. One-third of the 15 per cent must be in cash in vaults of bank. "Co-operative bank" may be organized under the general co-operative laws of the State. Articles of incorporation must provide that no person can own more than four per cent of capital stock; that dividends on capital stock shall not exceed ten per cent per annum, and that other net earnings for distribution are to be paid out as patronage dividends. State banks cannot pay interest on deposits, directly or indirectly, at a greater rate than five per cent prior to April 1, 1926, nor at a greater rate than four per cent thereafter.

Bank forwarding draft, note or check to bank on which it is drawn or where it is payable is not liable for failure of payor bank to account for proceeds if it has otherwise used due diligence in the matter.

State banks except savings banks authorized to own real estate under certain conditions, but amount held must not exceed 75 per cent of its paid-up capital without written consent of Dept. of Trade and Commerce.

All certificates of deposit issued by banks are non-negotiable.

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

Blue Sky Law. Prohibits sale of most corporate securities except upon permit by State Bureau of Securities. Detailed sworn statements required. Permit fee $10, if capital does not exceed $25,000, otherwise $25; for each agent, one permit one dollar per year. State trade commission investigates and gives information but does not recommend securities. Commission must not exceed 15 per cent of par value, organization and promotion not more than 2½ per cent. Preferred stock must have equal voting power with common stock. Change in articles of incorporation, agreement or association of person operating under authorization of Bureau of Securities, not effective until approved by such Department. Law does not apply to securities listed on New York, Boston or Chicago Stock Exchanges nor to certain other exempted classes.

Bulk Sales. (See Sales.)

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. Verbal mortgages are good between the parties. It is a felony to transfer or dispose of personal property mortgaged without procuring the written consent of the mortgagee, or to remove same out of the county with intent to defraud the mortgagee of his security. Mortgagor required to give accounting for mortgaged property from time to time on demand of mortgagee, and to give mortgagee notice in writing within 10 days after loss or death of mortgaged articles or animals.

Claims. (See Accounts, Administration of Estates.)

Commercial Travelers. (See Licenses.)

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. 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.

Contracts. Every contract for the purchase or sale of real estate or any interest therein, except a lease for a period not exceeding one year from the making thereof, must be in writing and subscribed by the party to be charged. 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 $500, 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 $500 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.)

Conveyances. (See Deeds, Mortgages, Conditional Sales.) Unless such intention expressly negatived by language in instrument, a covenant in conveyance of realty that grantor is seized, or lawfully seized shall be interpreted as covenant that grantor has good title to the very estate in quantity and quality he purports to convey. Covenants of quiet enjoyment and of warranty breached by constructive eviction by reason of hostile assertion of a paramount title holder: (1) Where covenantee is kept out of possession by paramount title holder; (2) Where covenantee surrenders possession; and (3) Where covenantee in order to retain possession is forced to purchase from paramount title holder.

Unless expressly negatived by the instrument, all covenants for title, of seizing, right to convey, freedom from incumbrances, quiet enjoyment, and warranty, run with the land and are enforceable by any assignee immediate or remote; no defense to the covenantor when sued by assignee that covenantor was a stranger to title the covenantor purported to convey.

Corporations. (See Foreign Corporations, Banks, Blue Sky Law.) 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. Banking corporations, insurance companies, holding companies, and building and loan associations must also file with Department of Trade and Commerce. 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 and "liabilities incurred through banks or any financial institution operating under federal laws.") 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 name of all the officers appended there, 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,

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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.

All corporations, whether incorporated under laws of Nebraska or any other State, must procure a state occupation permit from secretary of state, annually, before they may do business here. Annual fees for such permit as follows based upon capital stock on home companies, or on that portion of capital stock of foreign companies which represents Nebraska business: Capital of $1,000 to $10,000, fee of $5; $10,000 to $20,000, $10; $20,000 to $30,000, $15; $30,000 to $40,000, $20; $40,000 to $50,000, $25; $50,000 to $60,000, $30; $60,000 to $70,000, $35; $70,000 to $80,000, $40; $80,000 to $90,000, $45; $90,000 to $100,000, $50; $100,000 to $125,000, $60; $125,000 to $150,000, $70; $150,000 to $175,000, $80; $175,000 to $200,000, $90; $200,000 to $225,000, $100; $225,000 to $250,000, $110; $250,000 to $275,000, $120; $275,000 to $300,000, $130; $300,000 to $325,000, $140; $325,000 to $350,000, $150; $350,000 to $400,000, $160; $400,000 to $450,000, $170; $450,000 to $500,000, $180; $500,000 to $600,000, $200; $600,000 to $700,000, $250; $700,000 to $800,000, $300; $800,000 to $900,000, $350; $900,000 to $1,000,000, $400; $1,000,000 to $10,000,000, $400, and $75 additional for each million or fraction thereof over $1,000,000; $10,000,000 to $15,000,000, $1,200; $15,000,000 to $20,000,000, $1,500; $20,000,000 to $25,000,000, $2,000; over $25,000,000, $2,500. These fees, taxes and penalties are first lien on all property of the corporation. Fee for domestic corporations payable July 1st, for foreign corporations, during month of July. Fifteen per cent penalty for 30 days delinquency after 3 months wilful default, attorney general on request of secretary of state must bring action to forfeit charter. Foreign corporation must appoint resident agent on whom process may be served. Foreign corporation required to file names and addresses of stockholders residing in Nebraska on or before April 15th of each year with state tax commissioner.

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. Supreme Court Commission exists to assist court. Municipal courts are provided for cities.

Curtesy. Abolished 1907. (See Decedents.)

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. One-fourth to the husband or wife if survivor is not the parent of the children. 2. One-third to the husband or wife, if survivor is parent of the children. 3. One-half to husband or wife, if one or no child living. Residue to blood relatives. 4. If no children or wife surviving, to the children in equal shares and lawful issue of deceased child by representation. 5. If no issue, to father and mother or survivor. 6. If no issue nor parents, in equal shares to brothers and sisters and children of such deceased, by representation. 7. If no parents nor brothers nor sisters, to next of kin in equal degree, but where there are two or more collateral kindred in equal degree, but claiming through different ancestors, those claiming through nearest ancestor are preferred to those more remote. Provision is also made for surviving children dying under age unmarried. Claims against estate must be presented within time fixed by probate court, of which notice is given by advertisement, and is not less than three months nor more than two years after letters of administration issue. Dower and curtesy are abolished.

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 contary intention is expressed. Deeds and conveyances must correctly state actual consideration, where it exceeds $100.

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. 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 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.

Dower. Abolished 1907 (See Decedents.)

Employers Liability Act in force. Applies to employers having one or more employes. Provides for medical and hospital services and medicines, and schedule of benefits payable weekly. Maximum for death, $5,250; for injuries not fatal varies with extent of injury. No agreement valid if recovery of Relief Benefits or insurance conditioned on non-recovery of damages. No contributory negligence if substitute appliance or tool furnished by employer or foreman is defective.

Estates. (See Decedents.)

Executions. (See Judgments, Proceedings in Aid of Execution, Mortgages.) May issue at any time after judgment, if no stay bond or appeal bond be filed, and until five years thereafter. 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, on judgments not exceeding $50, three months; $50 to $100, six months; exceeding $100, nine months. In justice and county courts, within ten days, as follows: $10 or under, stay of sixty days; $10 to $50, ninety days; $50 to $100, six months; over $100, nine months.

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 mechanics' wages, nor can an attorney plead exemption in a suit for money or other valuable consideration received by him. Only 90 per cent of wages are exempt.

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 make written report to Secretary of State annually in July in form prescribed by secretary of state and pay fee same as occupation tax for domestic corporations; must on or before September 15th, of each year, 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. Does not apply to insurance companies or common carriers. Must appoint agent and file name with secretary of state and with register of deeds in county of principal place of business. Service may be had on such agent or on state auditor. Secretary of state charges fee of $50 for keeping record of agent. Penalty $1,000 fine. Agent or representative doing business here for corporation that has no resident agent, subject to $25 fine. Does not apply to insurance companies and railroads. Any corporation whose products are sold in Nebraska must have a resident agent on whom service in legal action can be had. Sale by jobbers of goods of foreign corporations not so represented is prohibited.

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. Garnishment may be issued against state or any of its political subdivisions.

Holidays are January 1st, February 12th, February 22d, April 22d, May 30th, July 4th, first Monday in September, October 12th, Thanksgiving, November 11th, and December 25th. No court can be open, nor can any judicial business be transacted on Sunday or on January 1st, May 30th, July 4th, December 25th, or any day of fast or Thanksgiving recommended by governor or president, 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. On any other holiday courts may transact any kind of judicial business. If any such fall on Sunday, the next day shall be a holiday.

Homestead. (See Exemptions.)

Husband and Wife. (See Decedents, Divorce, Evidence, Exemptions, Married Women.)

Infancy. All persons, male and female, under twenty-one are infants. County court appoints guardians, but if infant over fourteen years, may nominate his own. Infants' real estate may be sold or mortgaged to obtain funds for maintenance by permission of district court.

Insolvents. (See Assignments.)

Interest. Legal rate is 7 per cent and maximjm contract rate 10 per cent. Judgments draw same rate as specified in the instrument on which judgment obtained if more than 7 per cent, 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 from date of rendition. Judgments of county and justice courts become liens from date of filing transcript 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. Dormant judgments cannot be revived unless action to revive be commenced within ten years. In judgments by confession cause of action must be stated in the judgment or in a writing filed as a pleading. Deficiency judgments may be recovered in mortgage foreclosure cases, if the deficiency be such that it may be recovered at law.

Jurisdiction. (See Actions, Judgments.)

Justices of the Peace. (See Courts, Judgments, Actions.)

License. (See Insurance, Agents) Commercial travelers are not required to take out a license. There is a provision in the code requiring peddlers and commission merchants to take out a license. Does not apply to persons selling their own works or productions or books, charts, maps or other educational matter, or fresh meats, fruit, farm products, trees or plants exclusively.

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 subcontractor within sixty days. Lien dates back to commencement of work or labor and is valid for two years from date of filing. All mechanics' liens on the same premises are of equal priority and prorate in the proceeds of sale of property, if sold under foreclosure thereof. Statute also provides for artisans, jewelers, innkeepers, hotel, and rooming house liens.

Limitations. Actions brought to recover real property or foreclose mortgages thereon must be commenced within ten years after cause of action accrues. Actions for forcible entry and detention, libel, slander, assault and battery, malicious prosecution, false imprisonment, and those to enforce penalties or forfeitures, must be commenced within one year. Actions for trespass to real property, taking, detaining or injuring personal property, upon contracts not in writing upon a liability created by statute other than a forfeiture or penalty, for injuries to rights not arising out of contract, for relief on the ground of fraud, and all other actions not specially 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. Actions for damages for causing death must be brought within two years.

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.

Married Women. (See Decedents, Evidence, Exemptions.) May contract, bargain, sell, and convey their separate property in the same manner as may a married man, and retain ownership and

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

control of their own property notwithstanding the marriage. May sue and be sued, carry on trade or business as if unmarried, and earnings of any married woman are her sole and separate property. Liability as surety only applies to separate property owned at date of contract.

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 deeds 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, unless authorized by the court and if action be first commenced at law, cannot foreclose the mortgage until judgment obtained and execution returned thereon unsatisfied. After decree of foreclosure or 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. Mortgage must state actual consideration where it exceeds $100. Mortgage presumed to be paid at expiration of 10 years from date cause of action thereon accrues unless re-filed or an extension placed on record. In such case, the record thereof ceases to be notice and as against subsequent purchasers or encumbrancers for value the lien ceases to exist.

Negotiable Instruments. (See Notes.)

Notary Public. General commission may be issued by governor, authorizing notary to act in any county of state in which he files certified copy of his commission and bond with county clerk.

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 Saturday or Sunday, or a holiday, are payable on the next business day. Party purchasing negotiable paper before maturity, without notice, take same free from equities between original parties. Uniform negotiable instrument law is in force.

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 affect 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 name 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.

Promissory Notes. (See Notes.)

Proof of Claims. (See Decedents, Accounts.) Same rules of evidence govern as in civil actions.

Protest. (See Notes.)

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, executed by at least one surety, 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. Exception to sufficiency of surety approved by officer, must be taken in twenty-four hours or officer's liability is waived.

Revenue. (See Taxes.)

Sales. (See Conditional Sales.) Bulk sale of a stock of goods by merchant void without notice to creditors. Uniform Sales Act in force.

Security for Costs. Non-resident plaintiff must give security for costs or furnish cash bond.

Statute of Limitations. (See Limitations.)

Stay. (See Executions, Judgments, Mortgages.)

Suits. (See Actions.)

Summons. (See Actions, Attachments, Divorce, Service.)

Taxes. Taxes on real property are a lien thereon from December 1st of year of levy except general city taxes on real property in cities of metropolitan class which are a lien from May 1st of year following levy. Taxes on personal property are a lien thereon from November 1st 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. Special provision for tax on intangible property.

Torrens System. Provision is made for registration of land title, under Torrens System, upon application of owner.

Trust Companies are authorized to act as executors, administrators, receiver, agents, etc.

Trust Deeds are seldom used and are treated as mortgages.

Wills. (See Decedents.) Every person of full age and sound mind may dispose of his property by will, which must be signed by the testator, or under his express direction, by some one in his presence and subscribed in his presence and in the presence of each other, at his request, by two or more competent witnesses. Nuncupative wills are valid when approved 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.)

Workingmen's Compensation. (See Employers Liability.)

SYNOPSIS OF

THE LAWS OF NEVADA

RELATING TO

BANKING AND COMMERCIAL USAGES

Prepared and Revised by W. M. GARDINER, Attorney and Counselor at Law, Farmers Merchants National Bk. Bldg., Reno.

(See Card in Attorneys' List.)

Acknowledgments. Every mortgage, deed, or other conveyance, conveying or affecting real estate, shall be acknowledged or proved and certified as follows: If within this State it may be a judge or clerk of a court having a seal, notary public, county recorder, or justice of the peace. If without this State, and within the United States, by a judge or clerk of a State, United States, or territory court having a seal, a commissioner of deeds for this State, or some notary public or justice of the peace in his county. A justice's certificate which is attached to a deed to be recorded out of his county, must have a certificate of a clerk or a court of record of his county, as to his signature and official character. If outside of the United States, the acknowledgment can be had before a judge or clerk of a court having a seal, or a notary public or a minister, commissioner, or consul of the United States, the certificate of the officer taking the acknowledgment shall be annexed to or endorsed on the instrument, and shall be under hand and seal except in cases of justices of the peace which shall be under the hand of such justice of the peace and certified as above stated. The party executing and acknowledging the instrument must be known or proved by oath of witness to be the proper party, and the certificate must state such fact.

Conveyance by a married woman is acknowledged in the same way and form as that of a man and has the same effect as if she were unmarried. The form of acknowledgment by an individual shall be substantially as follows:

State of Nevada, County of ..... On this .....day of....., A. D. ..... personally appeared before me, a notary public (or judge or other officer as the case may be) in and for the County of ..... State of ....known (or proved) to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he (or she) executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written. .....Notary Public in and for the County of ..... State of.....(or other official name of the officer who takes the acknowledgment).

Form of acknowledgment of a corporation.

State of Nevada, County of .....On this .....day of.....A. D..... personally appeared before me a notary public (or other officer or judge as the case may be) in and for the County of .....State of..... (name of party who executed and acknowledges instrument) known (or proved) to me to be the president (vice-president or secretary) of the corporation that executed the foregoing instrument and upon oath did depose that he is the officer of said corporation as above designated, that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as designated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written. ....., Notary Public in and for the County of..... State of ....., (or other official name of the officer who takes the acknowledgment).

Form by attorney-in-fact:

State of Nevada, County of ..... On this .....day of .....A. D. .....personally appeared before me a Notary Public (or judge or other officer as the case may be) in and for the County of .....State of Nevada (name of person who executes and acknowledges instrument) known (or proved) to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of .....and acknowledged to me that he subscribed the name of said .....thereto as principal, and his own name as attorney-in-fact, freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written. .....Notary Public in and for the County of..... State of.....(or other official name of the officer who takes the acknowledgment).

By the laws of the State of Nevada, any acknowledgment heretofore or hereafter taken or certificate thereof made without this State either in accordance with the laws of this State or in accordance with the laws of the State, Territory, or Country where the acknowledgment is taken, shall be sufficient in this State. Nevertheless a Notary should affix his seal even in those states which do not require it.

The certificate of acknowledgment of conveyance:

A certificate of acknowledgment of any conveyance or other instrument in any way affecting the title to real estate or personal property, or the proof of execution thereof as provided in the laws of Nevada, signed by the officer taking the same and under the seal of such office, shall entitle such conveyance or instrument with the certificate or certificates of acknowledgment to be recorded in the office of the recorder of any county in this State provided that any State or United States contract or patent for land may be recorded without any such acknowledgment or proof.

Actions. (See Suits, Limitations.)

Affidavits. Affidavits taken out of this State but within the United States 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, consul, or vice-consul of the United States, or judge of a court in such foreign country having a seal. The genuineness of the signature of the judge, the existence of the court and the fact that such judge is a member thereof shall be certified by the clerk of the court, under the seal thereof.

Aliens. Persons and corporations, except subjects of the Chinese Empire, have the same rights as resident citizens and domestic corporations, except that foreign corporations must comply with corporation laws of this State.

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. 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. (See Attachment.)

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Assignments and Insolvency. Except as affected by the national bankruptcy act of 1898, the 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 judgment or upon a contract for the direct payment of money, 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 without act of plaintiff or person to whom given become valueless or insufficient in value to secure sum due in which case attachment may issue for unsecured portion or excess of debt over value of security. 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. 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, with an undertaking not less than $500, and an amount equal to one-fourth of demand, but not exceeding $5,000. In Justice's Courts (See Courts) bond must be in amount sued for but not under $50.

Banks. State—are regulated and controlled by a comprehensive general banking law. Amended (1915) to permit State banks to join Federal Reserve Bank System.

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 convevance, or mortgage, of a homestead as now defined by law, regardless of whether a declaration thereof has been filed or nor, 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.

Corporations. In 1925 an entire new corporation law was enacted, which governs corporations thereafter formed. It is most liberal, modern and flexible and filing fees are low. Corporations organized prior thereto are governed by the old act which is very similar to that of New Jersey. Foreign corporations to transact business and institute actions, in this State must file certified copy of articles of incorporation with the secretary of state and county clerk; also designation of resident agent. There is a license tax of $10 a year. Stockholders' and directors' meetings of Nevada Corporations may be held in or out of State. There is no "Blue Sky" law. The laws of this State are generally regarded as most desirable in every way for the formation of corporations to do business in other states. There is no stockholders' liability and stock may be either assessable or non-assessable as provided in articles. All classes of stock are permitted.

Curtesy is not recognized in this State.

Courts. Jurisdiction. District courts have original, statutory, and common law jurisdiction in all cases at law and 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, and in probate in all cases relating to estates of deceased persons, and persons and estate of minors, insane persons. Justice's jurisdiction, $300, exclusive of interest, and attorney's fees.

Deeds. A deed of quit-claim passes all the title that the grantor has at the date of the conveyance. A deed of grant, bargain and sale carries with it the statutory covenant that at the time that the grantor executed the deed, he had not conveyed it to any other person and had placed no encumbrance upon it. This form of deed conveys any title that the grantor shall afterwards acquire. A warranty deed contains a covenant: "The grantor herein will forever warrant and defend the title to the premises herein described against any and all persons whomsoever claiming the same."

The law governing and form of acknowledgments is titled under "Acknowledgments."

Depositions. Depositions may be taken within this State before any judge, clerk, justice of the peace or a notary public, upon notice to the opposite party of the time and place of taking. Depositions may be taken out of the State upon commission under the seal of the court upon proper application, or by stipulation of the attorneys.

Divorce. Divorce from the bonds of matrimony may be obtained by complaint under oath to the District Court, of the county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or, in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided six months before suit be brought for the following causes·

First: Impotency at the time of marriage continuing to the time of the divorce.

Second: Adultery, since the marriage, remaining unforgiven.

Third: Wilful desertion, at any time, of either party by the other for the period of one year.

Fourth: Conviction of felony or infamous crime.

Fifth: Habitual gross drunkenness, contracted since marriage of either party, which shall incapacitate such party from contributing his or her share to the support of the family.

Sixth: Extreme cruelty in either party.

Seventh: Neglect of the husband, for the period of one year, to provide the common necessaries of life, when such neglect is not the result of poverty on the part of the husband which he could not avoid by ordinary industry.

Provided, that uniesst he cause of action shall have accrued within the county while plaintiff and defendant were actually domiciled therein, no court shall have jurisdiction to grant a divorce unless either the plaintiff of the defendant shall have been a resident of the state for a period of not less than six months next preceding the commencement of the action. (New 1921).

Residence is defined as follows:

"The legal residence of a person with reference to his or her right of suffrage, eligibility to office, right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where he or she shall have been actually, physically and corporally present within the state or county, as the case may be, during all of the period for which residence is claimed by him or her; provided, however, should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence shall not be considered in determining the fact of such residence."

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 or real estate, one per cent per month must be paid in addition to purchase money. When property is redeemed from a previous redemption, which may be done within sixty days, his purchase price plus two per cent thereon is required.

Exemption. Homestead, $5,000; the earnings of the debtor, if earned thirty days preceeding, if it is made to appear necessary for the support of the debtor, except where debt is for necessaries, or his family when only one-half exempt; personal and mining property, tools, implements, etc., exempt same as in California (which see).

Garnishment. (See Attachment.)

Holidays. Sunday, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, October 12th (Columbus Day) and 31st (Nevada admission day). Thanksgiving, December 25th, and all days on which a primary or 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 afterward.

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 not in excess of 12 per cent per annum. 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. Unadjusted accounts do not bear interest.

Limitations of Suits. Open or store account and contract not in writing, four years; upon contract or instrument of writing, six years; actions concerning real property, except mining claims, five years; mining claims two years. Judgment, or decree of the district court, six years; of the justices court, five years. Revivor: Acknowledgment or new promise in writing or payment on account. Judgments become a lien upon real property for three 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. If a homestead is declared in separate property its homestead character ceases on death of either spouse and property goes to owner or heirs. The husband may dispose of one-half of the common property by will, exclusive of the homestead and of other property exempt from execution. The other half of the community property goes to the wife, subject to administration and debts of the husband. Separate property of wife should be inventoried and recorded. Failure so to do raises prima facie presumption property is not her separate estate.

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 be accompanied by the statutory affidavit of the mortgagor and mortgagee or some person on their behalf and is recorded in the county where the mortgagor and mortgagee reside.

Notes and Bills of Exchange. The uniform negotiable instrument law has been adopted in this State.

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.

All estates of husband or father of $500 or less are distributed to widow or children under age without probate, not subject to any debts.

Sales. The uniform sales act is in force in Nevada. There is also a "bulk sales" act.

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. Personal service of a copy of summons and complaint is equivalent to the publication of the summons.

Taxes are a lien upon the property assessed and the real estate of the owner thereof from the first Monday in 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 sales in the same manner as realty sold under ordinary execution.

Wills. Wills executed out of Nevada are good here if good where made. The Uniform Wills Act has been adopted.

SYNOPSIS OF

THE LAWS OF NEW HAMPSHIRE

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by JOHN J. LANDERS, Attorney at Law,
Buffum Block, Keene, N. H.

Acknowledgment 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, ambassador, envoy or charge d'affairs, or before any consular officer of the U. S.; a notary public; or any of the following officers having a seal: a commissioner or other agent of this State having power to take acknowledgments of deeds. The signature of the grantor must be attested by one witness. Certificates of acknowledgment outside U. S. must contain name of persons making the acknowledgment; date and place; statement that signers knew the contents of instrument and acknowledged same to be his; name of person taking acknowledgment, title and seal and be substantially in form prescribed by statute.

Actions. The common law prevails as to procedure. Non-residents can institute suit, a resident becoming responsible for costs by indorsing the writ or giving bond. Transitory action may be brought in the county where one of the parties resides. If both are non-residents the action may be brought in any county.

Administration of Estates. Administration shall be granted in the following order of precedure: 1. To executor named. 2. To widow, husband, or any of next of kin, or their nominee. 3. To one

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

of divisees or creditors. 4. To any other person judge may think proper. A non-resident shall not be appointed unless urgent necessity demands. An ample bond with resident sureties shall be filed. 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. 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 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 Attachments.)

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.

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. The provision of the law upon this subject are suspended by the United States bankruptcy 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 or priority of the lien. Trustee process (analogous to garnishment in other states) may be used to reach money or credits of the defendant in the hands of another. Save as against claims for necessaries the wages of the defendant up to $20 are exempt from such process. In actions on contracts where debt exceeds $13.33, defendant may be arrested on affidavit of plaintiff that he (defendant) has concealed his property or is about to leave the State to avoid payment of his debts. (See Garnishment.)

Bank. 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 banks, 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.

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

Chattel Mortgages. (See Mortgages.)

Collateral. There have been no statutory enactments on this subject. Pledges of stock is not liable as a stockholder, but the general owner is.

Conveyances. Every deed, and lease for more than seven years, shall be signed, sealed, attested by one witness 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. Voluntary corporations can be formed for any purpose excepting banking, the construction and maintenance of railroads, insurance, business of making contracts for the payments of money at a fixed date, or the business of a trust company, surety or indemnity company, a safe deposit company, or a trading stamp business.

Three or more persons may associate themselves by articles of agreement, which must contain the name of the corporation, object or objects for which it is established, city or town in which its principal place of business is to be located, the amount of its authorized capital stock with nominal or par value, and in the case of a corporation with capital stock or any class thereof without nominal or par value the total number of shares authorized, and any other provisions not inconsistent with law for its dissolution or for limiting, defining, or regulating the powers of the corporation, its directors, stockholders, or any class of stockholders, and shall be signed by the associates with the designation of the post office address of each.

Any name may be adopted not in use by any other New Hampshire corporation or foreign corporation doing business in the State.

Such corporation may issue stock with or without nominal or par value, shares being not less than ten in number, which may be issued from time to time in such amount and for such consideration as may be authorized by vote. Two or more kinds or classes of stock with preferences may be provided.

Stock with nominal or par value shall be not less than $1,000 in amount, par value of the shares shall not be less than $5.00 or more than $1,000.

After the organization meeting the treasurer and a majority of the directors shall make, sign and make oath to the record of organization, which shall contain the original or a true copy of the articles of agreement, the date or dates of the organization meeting, the names and address of the officers and directors, and the original or true copy of all votes passed determining the amount of capital stock, the kinds and classes of stock, and when and how to be issued.

Such record shall contain a statement that the consideration for which stock with nominal or par value is to be issued is of actual value in money equal to the par value of the stock.

The record shall be submitted to the Attorney General, approved by him and filed with the secretary of state together with the filing fee, which is $10 where the capital stock does not exceed $10,000; $25 when it does not exceed $50,000; $100 when it does not exceed $250,000; $150 when it does not exceed $500,000; $250 when it does not exceed $1,000,000; and $10 for each $100,000 above $1,000,000.

The clerk of every corporation shall be and continue a resident of the State.

Stock may be issued for cash, property, real or personal, rights, franchises, services or expenses, and may be issued from time to time in accordance with the provisions of the statute.

Corporations must render a return on or before March 1st of each year, stating the amount of its authorized capital, the amount of stock issued, number of shares, par value thereof, amount of indebtedness, value of all its property and assets as of the first of the preceding January, and shall pay a filing fee of $5.00. Fine of $5,000 or imprisonment for five years, or both, for failure of treasurer or directors neglecting to file.

All corporations shall annually pay to the State a fee equal to one-fourth the amount paid upon filing its original record of organization, plus one-fourth of additional payments for increases in capital stock, fee to be not less than $5.00 nor more than $100.

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. District police courts and justices of the peace have concurrent jurisdiction with the superior court up to $100 (except in cities of 50,000 or more population they have civil jurisdiction up to $500) 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 third Tuesday of May, and the second Tuesday of November. 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 second Tuesday of May and the second Tuesday of November; at Haverhill, on the third Tuesday of March and the third Tuesday of September; at Lebanon, on the third Tuesday of April and the third Tuesday of October.

Days of Grace. None except on sight drafts.

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 pltf. and.....is deft., to be heard and tried at the.....Court to be holden at....., in the County of....., on the.....day of .....,19..... Dated at.....this.....day of....19.. ....., Justice of the Peace."

One extra day's notice to be given, up to twenty days, for each twenty additional miles. They are taken before a justice of the peace or a commissioner. They can only be taken by written questions and answers proposed by counsel and administered by the magistrate. Objections are minuted on the deposition by the magistrate, but he does not pass upon the validity of such objections. Depositions shall be signed by the deponent, and he shall be sworn to testify to the truth, the whole truth, and nothing but the truh. 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.....Street, 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 pltf. and of, etc., is deft. The taking of 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 $5,000 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 $5,000, 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.)

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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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.

Fraud. Aside from criminal frauds, the superior court, in the exercise of its equity functions, has jurisdiction over frauds.

Garnishment. Known to our law as trusteeing. Any personal action except trespass, defamation of character, and malicious prosecution, may be begun by trustee process. Trustees are not chargeable upon default. Wages earned after the service of the writ are not held by the process. Twenty dollars in wages are exempt as against all claims except for necessaries. (Subject to passage of pending legislation—1913.)

Holidays. Sunday, Thanksgiving, Fast Day, First Monday of September, called Labor Day, Columbus Day, (October 12), Christmas, Fourth of July, 22d of February, 30th of May, the first day of January and election day. When any holiday falls on Sunday the following day is observed as a holiday.

Husband and Wife. They may make ante-nuptial agreements which can be in lieu of dower, homestead, and distributive share. (See Arrest, Aliens, Descent of Property, Dower, Divorce, Married Women, and Wills.)

Interest. Interest may be any rate, but is computed at 6 per cent per annum unless different rate is stipulated in writing. If any person, upon any contract, receives 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 the first day of December following their assessment, until sale of property taxed, and 12 per cent thereafter until time of redemption. Upon current accounts interest commences from date of demand for payment, unless controlled by the custom of trade, which is a question of fact to be determined by a trial thereof.

Judgments are not a lien upon real estate, except when attachment is made on the original process, when a lien exists for thirty days after judgment. Six per cent annual interest allowed on judgments. In actions on mortgages the judgment is conditional, that if the mortgagor pay the amount of the judgment within two months, the judgment shall be void. Judgments are rendered on the last day of the term of the court where the action has been disposed of.

Liens. Besides the common law lien the legislature has provided for a lien upon all the effects and baggage of a boarder; also liens or 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 who may have furnished a monument or tablet, or curbing, shall have a lien thereon. 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.

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 another 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 ante-nuptial 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 ineffectual unless the sum to be paid, or the thing to be done, is stated in the conveyance. All mortgages shall be signed in the presence of 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. 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.

Notes and Bills of Exchange. 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 or money. To charge indorser, notice of non-payment must at once be given to him. Time of Maturity: Every negotiable instrument is payable at the time fixed therein without grace, except sight drafts. 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.)

Power of Attorney. (See Conveyances.)

Probate Law. The probate court is a county court, and holds numerous sessions in various places. Proceedings are begun by petition and citation issued. The citations are served twelve days before the return day. The court may proceed without notice in the following cases. In the probate of wills in the common form; in the appointment of an executor nominated in a will; in the appointment of appraisers of an estate; in licensing the sale of real estate under $200 in value, or where the heirs consent in writing; in appointing guardians and commissioners; in granting allowances; in assigning dower and homestead, in making orders for suits upon bonds, in changing names; in appointing trustees nominated in a will. (See Administration of Estates, Courts, Descent of Property, Dower, Married Women, and Wills.)

Protest. Notaries public are the proper protesting officers. Notice of the non-payment or the non-acceptance upon residents by mail is sufficient. (See Notes and Bills.)

Replevin may be brought to recover goods or chattels in specie. The question of right of possession being in issue, the plaintiff shall give bond to the sheriff in a sum not less than double the value of the property to be replevied, to pay such damages as may be awarded against him. If the defendant shall prevail he shall have judgment for the return of the goods, and other damages, or for their value.

Taxes become a lien upon the realty simultaneously with their assessment (April 1st 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. A succession or inheritance tax of 5 per cent upon inheritances by collateral heirs, is collected through the probate courts.

Wills. Every person of the age of 21 years and married persons under that age, of sane mind, may devise and dispose of their property, real and personal, and of any right or interest they may have in any property by their last will in writing.

SYNOPSIS OF

THE LAWS OF NEW JERSEY

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by EDWARD R. MCGLYNN, Counselor at Law, 810 Broad St., Newark and Orange.
(See Card in Attorneys' List.)

Questions in regard to New Jersey law will be cheerfully answered by this attorney.

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, notary public, 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, duly certified, under the official seal of such commissioner, or by a master in chancery, or attorney at law of this State, notary public, 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 under the laws of such state, district or territory, at the time of taking such acknowledgment to take acknowledgments and proofs. 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; if before foreign officer then the proof or certificate must be accompanied by a certificate under the great seal of such foreign kingdom, etc., that the officer was authorized, under the laws of such kingdoms, at the time, to take acknowledgments and proofs of deeds or conveyances of lands, tenements or hereditaments in such kingdom, etc.

Actions. All common law actions are now denominated "action at law": this, however, does not apply to proceedings upon Prerogative Writs.

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 Chief Justice of the United States or any associate Justice of the Supreme Court of the United States, the Chancellor, Vice Chancellor, a judge of any court of record, master in chancery, attorney at law of New Jersey 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 or commissioner of deeds.

or FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

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 or supreme court to court of errors and appeals. From orphans' court to prerogative court. From prerogative court or court of chancery to court of errors and appeals.

Arbitrations may by the submission be made a rule of court, concluding the parties, by the award.

Arrests. In civil actions, 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 co-partnership, 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. Attachment will issue against female, corporation or organization as if such defendant were liable to arrest. (In actions of tort attachment will issue if summons can be served.) (See Arrest.) An action may be commenced by attachment upon proof to court, judge, or court commissioner: 1. That the plaintiff has a cause of action, stating nature and particulars, and that the defendant absconds from his creditors or is not resident and that summons cannot be served. (But no attachment will issue hereunder against the rolling stock of a common carrier of another state or against the goods of a non-resident in transit in the custody of a common carrier of this or another state.) 2. That cause of action survives against heirs or devisees of decedent, and that some of such are unknown or non-resident 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.)

Chattel Mortgages. 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 immediately in the county where the sale or transfer takes place. In case household goods are mortgaged, the wife must also join.

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 or the making thereof. Contract for the sale of goods of the value of $500 or upward (acceptance of part of the goods or payment of part or the price obviates necessity of writing); applies to sales for goods to be made as well as such as are in existence, unless goods are to be made especially for purchaser and are not suitable for sale to others in ordinary course of seller's business. Promise made after coming of age to pay debt contracted in infancy. Promise of bankrupt to pay after discharge. Promise to pay claim barred by Statute of Limitations. 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. Acknowledgment of wife may be taken in presence of husband. (See Married Women.)

Corporations. 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, except in case of no par value shares, 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, except in case of no par value stock. 6. The period, if any, limited for the duration of the company. 7. The certificate of incorporation may also contain any provision as to the regulation of the business and conduct of the affairs of the corporation, and any provision creating, defining, limiting, and regulating powers of the corporation, the directors and the stockholders, or any class of stockholders, provided such provision be not inconsistent with the act concerning corporations. Every certificate and report must give address of New Jersey office and name of agent in charge thereof, upon whom process against the corporation may be served. Directors shall be stockholders, and shall be chosen annually by the stockholders. They must be three in number, at least. The officers are chosen annually, president must be a director. One director must be a resident of the State of New Jersey. By chapter 197 Laws of 1916, rule is changed and none of directors need be residents of New Jersey. By chapter 168, Laws of 1920, corporation may now issue stock without any nominal or par value. Change in the nature of corporation's business name, amount of capital stock, classes of stock, etc., may be made by vote of two-thirds of stockholders. (P. L. 1920, p. 343.) 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 an 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 $200 to carry costs. Court of chancery has exclusive equity jurisdiction, and sits at Trenton. District court jurisdiction, co-extensive with county, in amounts $500 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, prerogative court, supreme court and circuit courts."

Curtesy. (See Dower.)

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 justice 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 by 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 Jeffery'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 and mother as tenants by the entirety, and if the mother be dead to the father in fee, unless the inheritance came from the mother by descent, devise, or gift. 4. In default of classes 1, 2, and 3, to the mother in fee unless the property came through the father. 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. 5. In default of all of these to the persons of equal degrees 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 the husband or widow, residue to children and legal representatives of children. 2. If no children or legal representatives whole of estate to husband or widow. 3. If no husband or widow all to children, and if no child, nor representative of child equally among parents and brothers and sisters, except where intestate a minor then all to parents if living, if not living, then to brothers and sisters equally. 4. If no husband or widow, child, legal representative of child, nor parent, brother or sister, than all to next of kin in equal degree.

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 justices' 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. Where an execution upon a judgment is returned unsatisfied and the judgment debtor is earning $18 or more per week, you can attach the salary up to 10 per cent thereof where it is under $1,000 per annum. But if over $1,000, the judge may order a larger percentage thereof to be attached.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 of 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, also Exemption.)

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; Good Friday; May 30th, known as Decoration Day; July 4th, called Independence day; first Monday of September, known as Labor Day: October 12th, known as "Columbus Day," November 11th, known as "Armistice 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.)

Inheritance Taxes—Transfer Taxes. Property in excess of $5,000 passing to father, mother, brother, sister, wife of son, widow of son, husband of daughter is taxed at the rate of 2 per cent up to $50,000; 2½ per cent between $50,000 and $150,000, etc.; passing to a husband, wife, child at the rate of 1 per cent up to $50,000; 1½ per cent between $50,000 and $150,000, etc. All others, except churches, hospitals charitable institutions and the like, organized under the laws of and operating solely within this state, are liable to a 5 per cent tax on amounts of $500 or more.

All taxes imposed by the act are due and payable upon death of the person from whom the property passes or is transferred. If paid within one year a discount of 5 per cent is allowed, and if not paid within one year interest at rate of 10 per cent per annum is added. (See P. L. 1914, Chap. 151.)

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; Tort actions, two 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. Where the defendant leaves the State the running of the statute is suspended during such absence.

Married Women hold and control their property, real and personal, precisely as if unmarried. But a married woman cannot become an accommodation indorser, guarantor, or surety, except under certain conditions. (See P. L. 1895, p. 821.) She cannot convey or encumber 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 cannot defeat her husband's interest in her real estate (see note under Dower), 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 Dower.) A married woman may sue, or be sued, without joining her husband, in any case in which he would be an unnecessary party if not her husband.

Mortgages. Unless to secure purchase money, wife must join (safer to follow this rule. See note under Dower.). A married woman cannot execute any mortgage without husband. Usually 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 recorded, 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. Regulated by an act entitled. "A General Act relating to negotiable instruments (being an 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.

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 cannot 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. Taxes payable one-half on April 1, which if not paid on June 1, become delinquent on that day. Remaining half to be paid on or before December 1st, after which date becomes delinquent.

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.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

SYNOPSIS OF

THE LAWS OF NEW MEXICO

RELATING TO

BANKING AND COMMERCIAL USAGES

Acknowledgments. (See Conveyances.)

Actions. The practice in this State 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 briginated, 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, 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 State.

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 State 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.

Arbitration. All litigants shall have the right to terminate their suits, in whatever condition they may be, by means of arbitrators, the litigants shall enter into an agreement in writing (the form of which is provided by statute) to submit their differences to arbitration and the arbitrators shall receive proofs and hear arguments of counsel, and render judgment 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. Insolvent debtors may make assignments for the benefit of their creditors. No preferences are allowed, but the assignment insures 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 may sue their debtors in the district court or justice of peace court for amounts less than two (2) hundred dollars, by attachment in the following cases, to wit: 1. When the debtor is not a resident of nor resides in the State. 2. When the debtor has concealed himself or absconded, or absented himself from his usual place of abode in this State, 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 State, 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 the State, and the debtor has absconded or secretly removed his property or effects into the State 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 State, unless such corporation shall have a designated agent in the State, upon whom service of process may be made in suits against the corporation. 7. When the defendant fraudulently contracted the debt or incurred the obligation, respecting which the suit is brought, or obtained credit from the plaintiff by false pretenses. An attachment may issue upon a demand not yet due, in any case where an attachment is authorized, in the same manner as upon demands already due. The attaching creditor must file with the clerk of the court a bond with two or more sureties in double the amount of the claim, and an affidavit sworn to by plaintiff or some person for him, setting out the amount of the claim, that it is due after allowing all just creditors 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. Any number of persons not less than three may incorporate a banking company, the capital of which shall be a paid up minimum of not less than $25,000 cash (not applicable to trust companies, however). Every bank must maintain a reserve of 12 per cent of its deposits, at least 40 per cent of which reserve shall be in cash in its own vaults.

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 and Notes are assignable as at common law, and the assignee thereof can bring suit in his 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.

Chattel Mortgages. Personal property of every description, including growing crops, are subject to mortgage. All instruments having effect of chattel mortgages must be acknowledged and recorded as are conveyances affecting real estate. Every mortgage so filed becomes void as to subsequent creditors, purchasers or mortgagees at the expiration of six years from filing. In absence of contrary stipulation mortgagor retains possession.

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 90 days 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 State 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.

Conditional Sales. Lease sales, sale leases, etc., void as to subsequent creditors, liens, etc., unless acknowledged same as mortgages and duly recorded or filed with recorder.

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 State it shall be made before any (1) clerk of the district court, (2) judge of probate court using probate seal, (3) notary public, (who has power and authority to administer oaths anywhere in the State, (4) justice of the peace. If taken without the State 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 State, (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'affairs 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. Husband or wife may convey their separate estate without consent of the other and husband has sole management and disposal of community property other than testamentary, except he cannot make a gift or convey without consideration any community property and he cannot sell, convey or encumber homestead without wife's consent. No seal or scroll necessary to the validity of conveyances except by corporations.

Corporations. There is a corporation commission with very limited powers, principally exercising its functions in the granting of charters and filing various corporation annual reports. 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 State 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 number of directors and their names, who shall manage the affairs fifty years; the number of shares into which the capital stock is divided; 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 a resident of the State. 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 or 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 or other states and territories, may do business in this state by filing with the secretary of State 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 and banking 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.

Days of Grace. (See Bills and Notes.) Not allowed.

Depositions. Depositions of witnesses to be used in any court in this State 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 State, or the county in which the suit is pending. 3. When the witness has left or is about to leave the State 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 State 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 State 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 State, 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 to and sworn 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.

Dower. There is none. (See Husband and Wife.)

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 State. 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 two months from date of rendition of judgment, and bond is given. 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 encumbrances, may be redeemed within one year. Sales under execution must be advertised four weeks prior to day of sale, in some newspaper.

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, 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 household goods or the additional value of $75 in lieu of certain domestic animals. 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 State 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 state or territory of the United States, or of the federal courts may be brought within seven years from and after the rendition of such judgments, 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. No garnishment or attachment proceeding may be brought founded on a sale or purchase of intoxicating liquors. Eighty per cent of a monthly salary or wage of $75 for last 30 days or less is exempt. Salary or wages in excess of $73 per month not exempt. No exemption whatever where debt incurred for necessities of life and defendant is not head of a family residing in State. Public officers may be summoned as garnishees where debts or cause of action has been reduced to judgment.

Holidays. Sundays, New Years, Christmas, Fourth of July, October 12th, Columbus Day, 22d of February, 30th of May, Thanksgiving and such other days as may be designated by the government as holidays.

Homesteads. (See Exemptions.)

Husband and Wife. All property owned by either contracting party at time of marriage remains separate property of each, likewise all property acquired during coverture other than by onerous title. Property acquired by onerous title belongs to the community. Conditionally it may be said that either is liable for necessities furnished family. Title in wife is presumption that property is her separate property.

Insolvent Laws. (See Assignments.)

Interest and Usury. Six per cent interest is the legal rate of interest in absence of contract, but parties may agree in writing for any rate of interest not exceeding 12 per cent. Open accounts bear interest at 6 per cent from six months after the date of last item in the account. Judgments bear the same interest as contract sued on, and in the absence of any specified rate, 6 per cent.

Judgments. Money judgments of the district and 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 $200. District courts have unlimited original jurisdiction. Probate courts hold six terms annually, and have ordinary probate jurisdiction. District courts and probate courts are courts of record.

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 or 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.) A garage has a lien upon and may retain possession of automobile for work done upon it or for parts or supplies furnished.

Limitations. Ten years adverse possession of land under color of title and payment of taxes 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 Real Property. (See also Chattel Mortgages.) There is no statute relating to mortgage on real estate, except that they must be executed and recorded in the same manner as deeds. The husband may mortgage his separate estate without the consent or signature o fhis wife, and wife may do the same. (See Conveyances.)

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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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. Dissolution of all partnerships must be published in newspapers of general circulation.

Probate Law. (See Claims Against Estates, Descent and Distribution, Executions, and Administration of Estates.)

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 $2.00; 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 one per cent per month on the purchase money. The purchaser under execution is entitled to the growing crops, and the rents and profits. When property is sold under a foreclosure proceeding the mortgagor has nine months within which to redeem same by paying the amount of the debt and costs, with 12½ per cent interest.

Replevin. Any person entitled to the immediate possession of personal property may have a writ of replevin for the same, upon filing an affidavid 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 is double damages for the detention of the property. No cross replevin allowed but defendant may retain possession by giving a forthcoming bond.

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 such taxes shall, from respective dates of delinquency, bear interest at rate of one per cent per month, until paid. Notice of tax sale of duplicate certificate shall be mailed to owner or agent of land, if known. 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 $200 allowed to head of family residing in State. (See exemptions.) Irrigation, reservoir, and railroad companies exempt under certain conditions for a term of years. Net value only of the annual output of mines taxed. Suit may be brought to collect amounts in excess of $25.

Wills. Any person of the age of twenty-one years or upwards, and in sound mind, may dispose of by will 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 State 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.

Workmen's Compensation Act in effect June 9, 1917, applicable only to certain occupations and by mutual consent of employer and employee.

SYNOPSIS OF

THE LAWS OF NEW YORK

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by GEORGE J. HATT, 2d, Attorney at Law, 74 Chapel St. 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 or 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.

The acknowledgment by an individual is in the following form:

"State of New York,
County of..... } ss:
City of..... }

On this .....day of .....in the year one thousand nine hundred and ..... before me, the subscriber, personally appeared ..... to me personally known to be the same person described in and who executed the foregoing instrument, and he .....acknowledged to me that he executed the same."

The acknowledgment by a corporation is as follows:

"State of New York ..... } ss:
County of..... }

On the .....day of ....., in the year ....., before me personally came ..... to me known, who, being by me duly sworn, did depose and say that he resides in ..... that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)"

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 grandchildren. 4. To the father or mother. 5. To the brothers or sisters. 6. To any other next of kin, entitled to share in the distribution of the estate. If no person entitled to take or share in the estate will accept administration shall be granted (a) To the public administrator. (b) To the County Treasurer, or to the petitioner in the Surrogate's discretion. (c) To any other person.

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. (Laws 1920, Chap. 275.) The practice is regulated by the Civil Practice Act. (Article 84.) Clauses in contracts providing for arbitration are irrevocable.

Assignments and Insolvency. Statutory provision exists, regulating the making of general assignments in trust for the benefit of creditors. (Laws 1909, Chap. 17, as amended.) Wages or salaries of employes, for services rendered within three months prior to the assignment not exceeding $300, to each employe are preferred over all other debts; the debtor may create other preferences to the amount of one-third in value of the assigned estate left after deducting such wages or salaries and the costs and expenses of excuting 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 advertisements, 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.

Statutory provision also exists for a resident insolvent debtor to be discharged from his debts upon his written petition and the written consent of unsecured creditors whose claims amount to not less than two-thirds of all the debts owing by the petitioner to creditors residing within the United States. (Laws of 1909, Chap. 17, Art. III.) This proceeding is rarely resorted to.

Attachments may issue in actions to recover a sum of money only as damages for breach of contract, wrongful conversion of personal property, or injury to person or property in consequence of negligence or fraud, a wrongful act, neglect or default causing death where the cause of action arose in this state where action is brought by an executor or administrator, 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 State of New York 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 prohibits the legislature from passing any act granting any special charter for banking purposes: but corporations or associations may be formed for such purposes under general laws.

On April 16, 1914, the present banking act became a law. This act repeals virtually all previous laws on this subject and covers the entire banking field.

The act expressly includes every private banker engaged in the business of private banking in any city of the state.

1. Who makes use of any office sign bearing thereon the word "bank," "banker," "banking." or any derivative or compound of the word "bank," or any words in a foreign language having the same or similar meanings, or who makes use of any exterior sign bearing thereon any such word or words or any words whatever to indicate to the general public that such person is engaged in the business of a private banker: or

2. Who pays or credits interest, or pays, credits or gives any bonus or gratuity or anything, of value except on certificates of deposit actually outstanding at the time this act takes effect to any depositor on a deposit balance of (a) less than $500, if such private banker is engaged in business is a city of the first class, or (b) less than $300, if such private banker is engaged in business in a city of the second class, or (c) less than $200, if such private banker is engaged in business in a city of the third class: or

3. Who receives money on deposit for safekeeping or for transmission to others or for any other purpose in such sums that the average of the separate deposits so received by such private banker since April 1st, 1914, or during any twelve successive months, or for such period, if less than twelve months that such private banker has been engaged in such business, exclusive of dividend checks, coupons or other small collection items collected by such private banker for customers in the ordinary course of business, is (a) less than $500, if such private banker is engaged in such business in a city of the first class having a population of over 1,000,000, or (b) less than $300, if engaged in business in any other city of the first class, or (c) less than $200, if engaged in business in any city of the second class, or (d) less than $100, if engaged in such business in any city of the third class.

The following are some of the more important subjects under this article: Verified certificate to be submitted by private banker to department; Conditions precedent to transacting business; Rights of private banker under authorization certificate; Permanent capital, increase or decrease; Segregation of investments of capital and deposits, how title to be taken; Depositors preferred in case of insolvency; Annual report of unclaimed, deposits; Deposit of securities with the superintendent of banking; Investment of permanent capital and deposits; reserves against deposits, etc.

Five or more persons may form a corporation to be known as a bank. In a village whose population does not exceed 2,000, a capital of $25,000 is required; where the population exceeds 2,000, but does not exceed 30,000, $50,000 is the capital required, and not less than $100,000 elsewhere. A bank's affairs must be managed by a board of from five to thirty directors unless its capital exceeds $5,000,000 when the number may be from five to forty.

Provision is made for circulation and a deposit for security therefor. Stockholders of all banking corporations are liable to the extent of the amount of their stock at par, in addition to the amount invested in such shares, for all debts and liabilities; bill holders, in case of insolvency, shall be entitled to a preference in payment over all other creditors of the bank. Quarterly reports are required to be made to the superintendent as of a date designated by him by all private bankers, trust companies and banks of discount. Savings Banks are required to report on or before February 1st and August 1st of each year which report shall state its condition on the morning of January 1st and July 1st in said year. The superintendent of banks is given authority to examine the books of any bank. No corporation

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

other than a moneyed or insurance corporation may do business in this State with the words, "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," or "benefit," as a part of its name or corporate title.

The general banking act also provides for the organization and management of savings banks and trust companies.

Banks of discount and deposit shall maintain total reserves against its aggregate demand deposits as follows: 18 per cent of such deposits if located in borough having population of 2,000,000 or over, 15 per cent if in borough of 1,000,000, 12 per cent elsewhere in state. Member of a Federal Reserve Bank may maintain such portion of reserves with said Federal Bank as required of its members. Any part of reserves in excess of 4 per cent of deposits may be deposited, subject to call, with federal reserve bank in district.

Trust companies having their principal place of business or a branch office, in a borough of this State, having population of 2,000,000, are required to have a lawful money reserve of fifteen (15) per cent, in borough of 1,000,000 population 13 per cent, and in all other places in the State ten (10) per cent. The amount of reserve to be carried on hand is dependent upon location. Any part of reserves on hand in excess of 3 per cent of such deposits, may be deposited, subject to call, with a federal reserve bank in district where the trust company is located, reserves on hand not so deposited shall consist of gold, gold bullion, gold coin, U. S. gold certificates, U. S. Notes, or any form of currency authorized by laws of the U. S. Any bank becoming a member of a federal reserve bank will nevertheless be protected if it maintains such reserves with such federal reserve bank as are required by the Federal Reserve Act.

Foreign banking corporations may transact in this State the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same or of making sterling or other loans, if the corporation is authorized by its charter to carry on such business by paying a license fee of $250 a year, submitting to Superintendent of Banks exemplified copy of its charter and by-laws, designating superintendent as attorney in fact to accept service of process and otherwise comply with Secs. 144-147 of the Banking Law, and receive from the superintendent of banks a license authorizing it to transact such business.

Payment of Savings Bank Deposits. Deposit in name of any minor is free from control of all persons, except creditors, and the receipt of such minor for such deposit is valid to the bank.

Any deposit in trust for another, in the event of the death of the trustee, may be paid to the person for whom the deposit was made, in the absence of notice of the existence of a legal trust.

A deposit in the names of depositor and another person and made payable to either or the survivor, may be paid to either during the lifetime of both, or to the survivor after death of one.

The superintendent of banks can authorize a bank to act in any fiduciary capacity ordinarily held by a trust company.

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

Blue Sky Law. Chapter 475 of the Laws of 1913, constituting Section 952 of the Penal Law, provides that any person who with intent to deceive makes, issues or publishes a statement or advertisement as to the value or as to facts affecting the value of the stocks, bonds or other evidences of debt of a corporation, and who has reasonable ground to believe that any material representation, prediction or promise made in such statement or advertisement is false is guilty of a felony punishable by a fine of not more than $5,000, or by imprisonment of not more than three years, or by both.

By Chapter 520 of the Laws of 1921, in effect September 1, 1921, Section 421 of the Penal Law theretofore applying to untrue or misleading advertisements pertaining to the sale of merchandise, real estate or service, was amended to include securities. By the aforesaid amendment any person, firm, corporation or association, or agent or employe thereof, who with intent to sell or dispose of securities to the public makes, publishes, disseminates, circulates or places before the public in a newspaper, magazine or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster bill, sign, placard, card, label, or tag, or in any other way, an advertisement, announcement, or statement of any sort, containing any assertion, representation of statement of fact which is untrue, deceptive or misleading, is guilty of a misdemeanor. The so called Martin Act (General Business Law Act. 23-a **P** 352 et seq. as amended gives the Attorney General wide powers to investigate alleged fraudulent practice in the sale of stocks, bonds and other securities by any person, partnership, corporation, company, trust or association. The act is aimed at foreign as well as domestic corporations and provides for action by the Attorney General on behalf of the people in which either preliminary or final injunction may be granted. The giving of testimony in the investigation or action is made compulsory even though such testimony tends to incriminate but immunity is of course granted.

Bulk Sales. (See Personal Property Law.)

Chattel Mortgages. (See Mortgages.)

Consolidated Laws. TheLegislature of 1909 passed a large number of compiled statutes reported by the Statutory Consolidation Board, known as "Consolidated Laws," to distinguish them from the "Revised Laws," "Revised Statutes," and "General Laws" heretofore in force in this State.

Conveyances. An estate or interest in real property other than a lease for a term not exceeding one year, cannot be created or granted except by a deed or conveyance, in writing, subscribed by the person creating and granting the same, or by his lawful agent thereunto authorized by writing. This does not affect the power of the testator in the disposition of his real property by will. Deeds must be acknowledged and take effect from delivery only.

Every conveyance not recorded is void, as against a subsequent purchaser in good faith and for a valuable consideration from the same vendor, his heirs or devisees, whose conveyance is first duly recorded.

Acknowledgment must be made by the party who executes the conveyance, except that proof of due execution may be made by the affidavit of some other person who is a witness to its execution, and at the same time subscribed his name to the conveyance as a witness.

A married woman must join in the conveyance to release her dower. The former provisions of the Revised Statutes relating to the sealing of deeds have been omitted from the present Real Property Law, but it is the universal practice to affix a seal and the forms of deeds incorporated in the "Real Property Law" refer in the attestation clause to the affixing of the seal. The word "Seal" or the letters "L. S." opposite the signature will, however, suffice as the seal of a person. It is otherwise as to corporations, which should adopt a seal and affix it to the conveyance.

Section 258 of Chapter 50 of the Consolidated Laws, being Chapter 52 of the Laws of 1909, provides the following form for a Full Covenant Deed:

Deed with Full Covenants

This indenture, made the.....day of..... in the year nineteen hundred and....., between.....of (insert residence) of the first part, and.....of (insert residence) of the second part.

Witnesseth, that the said party of the first part, in consideration of.....dollars, lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth covenant with said party of the second part as follows:

1. That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.
2. That the party of the second part shall quietly enjoy the said premises.
3. That the said premises are free from incumbrances.
4. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.
5. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In presence of:

The above enactment does not prevent or invalidate the use of other forms.

Corporations. Insurance, banking, railroad, transportation, and business corporations may be formed under the general laws of the State.

Foreign Stock 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, shall maintain any action in this State upon any contract made by it in this State unless prior to the making of such contract it shall have procured such certificate." "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." What constitutes "doing business in this State" depends on the particular state of facts in each given case; in general it may be said that the selling of goods in this state by mail or through traveling salesmen does not constitute "doing business." Foreign corporations doing business in this State may acquire real property for its corporate purposes and convey the same in the same manner as a domestic corporation. 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. 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., 563, Jan., 1894.)

No domestic or foreign corporation, except religious, charitable or benevolent corporations, are authorized to do business in the State of New York unless its name has such word or words, abbreviation, affix or prefix therein or thereto as would clearly indicate that it is a corporation as distinguished from a natural person, firm or co-partnership, or unless such corporation uses with its corporate name, in this State, such an affix or prefix; this provision relates only to corporations authorized to do business in this State, or to domestic corporations formed since January 1, 1912. Co-operative corporations are now specifically defined and governed by the provisions of the Co-Operators Corporations Law constituting Chap. 77 of the Consolidated Laws. According to the classification in Act. 172 such corporation shall be either: 1. A Co-operative non-stock agricultural dairy or horticultural corporation. 2. A consumers' co-operative non-stock corporation. 3. A producers' and consumers' co-operative stock corporation. 4. A Co-operative marketing corporation which may be either a stock or a non-stock corporation.

Courts. Terms and Jurisdiction. The supreme court has unlimited jurisdiction. There is a county court for each county (except New York County) having jurisdiction to the amount of $2,000, in actions where the defendant is, or if there is more than one, where all of the defendants are, residents of the county. Justices of the peace have jurisdiction in actions on contract where the sum claimed does not exceed $200, and district courts of the city of New York, where the sum does not exceed $250, the city court of the city of Albany, where the sum does not exceed $1,000, and the Municipal Court of the City of New York where the amount does not exceed $1,000.

Days of Grace are abolished.

Descent and Distribution. The real property of an intestate descends. (1) to lineal descendants, per capita, if of equal degree, per stirpes if of unequal degree; (2) to the parent from whom the inheritance came but if such parent is dead then to the surviving parent for life with reversion to the brothers or sisters of intestate or their descendant and if no such brothers or sisters or their descendants then to the surviving parent in fee; (3) if the inheritance came to intestate from neither parent and he leaves no lawful descendants to his parents or to the survivor of them in fee; (4) to the collateral relatives of nearest common degree of consanguinity: i. e. (1) brothers and sisters and their descendants; (2) paternal uncles, aunts and descendants, unless estate comes from maternal branch; (3) maternal uncles, aunts and descendants; (4) in equal shares to the paternal or maternal grandparents respectively according to whether the estate was derived from one branch or the other but if the grandparents on the side from which the inheritance came are dead, then to the grandparents on the other in equal parts. An illegitimate child inherits from its mother in absence of lawful issue and likewise a mother inherits from an illegitimate child where such child has no issue entitled to take. Relatives of the half blood inherit equally with those of the whole blood unless estate is derived from opposite branch of family. Estate coming to intestate from deceased husband or wife reverts to his or her heirs.

Personal Estates are distributed: One third to widow, if living, and balance equally among children. If widow but no children survive, one half to widow and balance equally among next of kin (grandchildren, parent, brother or sister, niece or nephew). If widow and no next of kin, entire amount to widow. In absence of descendant, or parent, widow $2,000 and half of surplus. If no widow, to children or their representatives. If no widow and no children and no representatives of a child then to the next of kin in equal degree, if no father, child or descendant but a mother she takes the whole unless there is a widow in which case she takes one half and the same thing applies, if instead of a mother, a father survives under like circumstances. If both a father and mother survive in such case they each take one-quarter if there is a widow but one-half if there is not. Illegitimate's estate, in absence of descendant or widow, goes to mother or representatives. Kin of equal degree take equally, unequal degree per stirpes. Relatives of the half blood take with those of the whole blood. Illegitimate child takes from mother in absence of lawful issue. (See Married Women.)

Deeds. See Conveyances.

Depositions. The deposition of a party or of a person not a party within this State, in an action brought or to be brought, may be taken where shown that such testimony is material and necessary in the prosecution or defense of the action; or if the action is pending that the person to be examined is about to depart from the State, or that he is so sick or infirm as to afford reasonable ground to believe that he will not be able to attend the trial. Such deposition, except that of a party taken at the instance of an adverse party, can only be used upon proof of the witness' inability to attend the trial. Depositions may be taken without the State for use within the State. The commission, in the discretion of the court, may direct the examination upon oral questions or written interrogatories. Depositions may also be taken within the State for use without the State in an action or special proceeding pending in a court without the State, either in the United States or in a foreign country. A person who fails to respond to a subpœna for such examination is guilty of contempt of court. Depositions may also be taken for use on a motion in any action or proceeding.

Dower. (See Married Women.)

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.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 of over $25, after execution is returned unsatisfied, defendant and others, including corporations, may be examined as to the judgment debtor's property in proceedings supplementary to execution, and required to apply any not exempt in payment.

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. Not to exceed 10 per cent of the earnings or income of a judgment debtor receiving $12 or more per week may be collected and applied on judgment by order of the court under a garnishee execution.

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, wherein he states that he keeps books of account, the purchaser upon failure to pay at maturity and during the period of ninety days subsequent to such failure 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.

False Statement to Obtain Property or Credit. Any person who knowingly makes, or causes to be made, directly or through any agency whatsoever, any false statement, in writing, respecting his financial condition, or that of any person, firm or corporation in whom he is interested, or for whom he is acting, for the purpose of procuring the delivery of personal property the payment of cash the making of a loan or credit, the extension of credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note for the benefit of either himself or of such person, firm or corporation, or, knowing that a false statement, in writing, has been made, procures upon the faith thereof any of the things of benefit above mentioned, or who represents on a later day, either orally or in writing, that such statement theretofore made, if again made on said day, would be then true when, in fact, the statement if then made would be false, and procures upon the faith thereof any of the things of benefit aforesaid, is guilty of a misdemeanor, punishable by imprisonment for not more than one year or a fine of not more than $1,000, or both.

Garnishment. (See Exemptions.)

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; the twelfth day of October, known as Columbus 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.

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 cannot plead usury as a defense. Usury, in certain cases, such as loans on household furniture, etc., 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. 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.

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 the 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. 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.

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 representative, unless a copy thereof is refiled annually with 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 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.

Notes and Bills of Exchange. Negotiable instruments are defined by Chapter 38 of the Consolidated 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. 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, or provides for the payment of costs of collection or an attorney's fee in case of non-payment at maturity. 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 as follows by "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 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.)

Personal Property Law. By Chapter 571, Laws of 1911, in effect September 1, 1911, the Legislature enacted a law in relation to sales of goods. This enactment is a codification of the entire law as to such sales and makes extensive changes in the common law upon the subject. "A contract to sell or a sale of any goods or choses in action of the value of $50 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action, so contracted to be sold or 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 or sale be signed by the party to be charged or his agent in that behalf." This does not apply to goods to be manufactured by the seller especially for the buyer and not suitable for sale to others in ordinary course of business. The statute also defines Warranties, express and implied, etc.

The transfer of a stock of goods in bulk is void as against creditors unless they have five days' notice of the proposed transfer. (Chap. 507, Laws 1914.)

Probate Law. (See Wills.)

Protest. (See Notes and Bills of Exchange.)

Sales of Goods. (See Personal Property Law.)

Statute of Frauds. (See Personal Property Law.)

Taxes. Lands returned to the State Comptroller for non-payment of taxes may be sold at any time after the expiration of one year subsequent to February 1st following the year in which the tax was levied; notice of the proposed sale must be published for twelve weeks; the owner, or occupant, or any other person in interest may redeem from the sale at any time within one year by paying the amount for which the property was sold, with interest at 10 per cent per annum; the time when taxes become a lien varies in the several cities and counties of the State; in cities assessments for local improvements constitute a lien enforceable against the real estate.

Income Tax. All residents, and all non-residents conducting business within the State, must pay an annual income tax on net income: 1% on first $10,000., 2% on next $40,000., and 3% on excess. Single persons are entitled to exemption of $1,500., plus $400 for each person under 18 years of age or mentally or physically defective whom he or she supports; married persons to $3,500., with additional $400 for minor children and defectives.

Wills. All persons, except idiots, persons of unsound mind, and infants, may devise their real estate by will. Males of 18 years and upwards and females of 16 years and upwards 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. Subsequent marriage revokes a will as to husband, wife or issue of such marriage unless such husband, wife or issue shall have been provided for by settlement or in the will or so mentioned therein as to show an intention not to provide for them. A devise or bequest to a witness whose testimony is necessary to establish the will is void. The Surrogate's Court Act regulates the practice of probating wills in the surrogates courts of the several counties of the State. No person can devise more than half his estate to any charity if he has a husband, wife, child, or parent living.

SYNOPSIS OF

THE LAWS OF NORTH CAROLINA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by ROBERT H. SYKES, Durham, N. C.
(See Card in Attorney's List.)

Accounts and Claims, Proof of. In any action instituted in any court of the State upon an account for goods sold and delivered, for services, rendered, or labor performed or upon an oral contract for money loaned, an itemized statement of said account, properly verified, shall be received in evidence, and shall be deemed prima facie evidence of the correctness of said account. All creditors of the maker of a deed of trust or assignment must file with the clerk of the superior court a statement under oath, that the amount claimed is justly due, after allowing all credits and offsets. Creditors of a decedent must present their accounts and claims to the administrator or executor within twelve months after publication of notice of administration. But if they fail to do so, and the personal representative has not disbursed the assets of the estate, the creditor may still recover of the personal representative. If he has disbursed the assets, the creditor may recover of the heirs, devises, 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, may be proven or acknowledged (1) before any one of the following officers of this State: 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, or (2) before any one of the following officials of the United States, of the District of Columbia, of the several states and territories of the United States, and of countries under the dominion of the United States and of foreign countries. 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, any ambassador, minister, consul, vice-consul, vice-consul general, or commercial agent of the United States. The execution of such instrument may be proven or acknowledged before any justice of the peace, of any State or Territory of the Unites States, but when such acknowledgment or proof is taken by the last named officer residing out of the county in which the instrument is offered for registration, the clerk of some court of record in the county where such justice resides must attach his certificate that the justice was at the time an acting justice of the peace of such county.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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 not act. 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.

The following persons are incompetent to qualify as administrators, namely: A minor, a non-resident, an alien, a person who has been convicted of a felony or one adjudged by the clerk incompetent by reason of drunkenness, improvident or want of understanding, or one who refuses or fails to give the bond required.

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 for 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.

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 aset side 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 certain cases prescribed by statute.

Assignment and Insolvency. Debtors are not permitted by the state law to make assignments or deeds of trust with preferences of particular creditors. A general assignment for the benefit of creditors will not affect any lien in favor of a creditor previously obtained.

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.

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 than $25,000, except at a bank organized in a city or town not exceeding 1,500 inhabitants can have a capital stock of not less than $5,000, and 5,000 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 promissory 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. Provided no bank shall be authorized to commence business with less than paid in capital of $5,000. 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.

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 law 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. January 1st, January 19th, February 22d, April 12th, May 10th, May 20th. July 4th, first Monday in September, and the day appointed by the governor as a thanksgiving day, Tuesday after the first Monday in November when a general election is held, 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. There is no difference between Saturday and any other business day so far as negotiable instruments are concerned. When the date of maturity falls upon Sunday or a legal holiday, the instrument is payable on the next succeeding business day. Demand paper falling due on a Saturday not a holiday may be presented before 12 noon. The Negotiable Instruments Law, which is the same as the New York statute, was adopted in 1899, and is chapter 54 (Sections 2151 to 2346) of Revisal of 1905.

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.

Corporations. May be formed, by any number of persons, not less than three, 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.

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 another state or foreign government may acquire by devise or otherwise, and may hold, nortgage, 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.

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, twenty cents for every $1,000 of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than $5.00. Every corporation failing to comply with the provisions of this section shall forfeit to the State $500, 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. Acrs of 1903, page 1124.

Courts. The supreme court is the appellate court of last resort. 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 nearly all of the counties oftener. Clerks of the superior court have jurisdiction of the probate of deeds, granting 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. 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.

Days of Grace. All bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect, and not otherwise, shall be entitled to days of grace as the same are allowed by the customs of merchants in foreign bills of exchange payable at the expiration of a certain period after date on sight: Provided that no days of grace shall be allowed on any bill of exchange, promissory note, or draft payable on demand.

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, although her signature and acknowledgment alone bars her right of dower. (See Acknowledgments and Probate of Deeds.)

Depositions. Any party in a civil action or special proceedings may take the depositions of persons whose evidence he may desire to use. 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.

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. 2. Females shall inherit equally with males, and younger with older children. 3. The lineal descendants shall represent their ancestors. 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. 7. 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. 8. When a person shall die leaving no heirs, the widow shall be deemed his heir. 9. Illegitimate children shall inherit from their mother. 10. Illegitimate children may inherit from each other. When an illegitimate child shall die without issue, his mother shall inherit from him. 11. 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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 kin of the intestate who are in equal degree and those who legally represent them. 6. If, in the lifetime of the father, any of his children shall die intestate without wife or children, then the father shall be entitled to all of the personal property of such deceased child, 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 nor legal representative of a deceased child nor any of the next kin of the intestate, then the widow, if there be one, shall be entitled to all of the personal estate of such intestate. 8. If any married woman die intestate leaving one child and a husband, her personal estate shall be equally divided between the child and the husband. If she leave more than one child and a husband, her personal estate shall be divided in equal portions and the husband shall receive a child's part: Provided, However, that this act shall not apply where the husband of the deceased woman is father of all the children, or their descendants of his deceased wife.

Detinue. (See Claim and Delivery.)

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, for her lifetime. 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 of Estates.)

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 creditors, 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.

Foreign Corporations. (See Corporations.)

Fraud. Alienations, which may be contrived for fraud, shall be deemed and taken to be utterly void and of no effect. Every conveyance, of any lands or goods, if the same be made with the actual intent in fact to defraud such person as hath purchased, or shall purchase, or to defraud such as shall purchase any rent or profit out of the same, shall be deemed utterly void.

Fraudulent Sales. The sale in bulk or a large part of the whole of a stock of merchandise, otherwise than in the ordinary course of trade and in regular and usual prosecution of the seller's business, shall be prima facie evidence of fraud, and void against the creditors of the seller, unless the seller, at least seven days before the same make an inventory showing the quantity and, so far as possible, the cost price to the seller of such articles included in the sale, and shall within said time notify the creditors of the proposed sale, and the price, terms and conditions thereof, provided, and if the owner or owners of said stock of goods shall at any time before the said sale execute a good and sufficient bond to a trustee therein named, in an amount equal to the actual cash value of said stock of goods, and conditional that the seller of said stock of goods will apply the proceeds of said sale, subject to the right of the owner or owners to retain therefrom the personal property exemption or exemptions as are allowed by laws, so far as it will go in payment of debts actually owing by said owner or owners, then the provisions of this act shall not apply.

Fraudulent Trading. That 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 of 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 feme convert, by a sign placed conspicuously at the place wherein such business is conducted, then all the property stock of goods and merchandise and choses 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 business as aforesaid without complying with the above shall for all purposes be deemed and treated to all debts contracted in the course of such business as a free-trader. No business can be legally conducted or transacted in this State by any person or persons under any assumed name, or under any designation, name or style other than the real name or names of the individual or individuals owning, conducting or transacting the same, unless such person or persons shall file in the office of the clerk of the superior court of the county or counties in which such business is conducted a certificate duly acknowledged setting forth the name under which such business is to be conducted or transacted, and the true and real name or names of the person or persons owning, conducting or carrying on the same, with the home and post office address or addresses of said person or persons; but the foregoing shall not apply to the selling of goods by sample or through traveling agents or salesmen, or by orders forwarded by purchasers through the mails. Failure to comply is a misdemeanor.

Frauds, Statute of. No action shall be brought whereby to charge an executior or administrator upon a specal promise to answer damages out of his own estate or to charge any defendant upon a special promise to answer the debt, default for 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.

Garnishee Process. Process may issue upon judgment and in attachment to hold, and where a third party may owe or have belonging to debtor.

Holidays. January 1, January 19, February 22, April 12, May 10, May 20, July 4, first Monday in September and a day appointed by the governor as a day of thanksgiving, Tuesday after first Monday of November when a general election is held, 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. (See Bills of Exchange and Promissory Notes.)

Homestead. (See Exemptions.)

Husband and Wife. (See Married Women.)

Interest. The legal rate of interest in 6 per cent. Taking, receiving, or charging a greater rate, either before or after the interest may accrue, when knowingly done, shall cause a forfeiture of the entire interest. The person or corporation by whom it is paid may recover back twice the amount of interest paid in the nature of an action for debt, commenced within two years after payment. In any action brought to recover upon the note or other evidence of debt, the defendant may plead by way of counterclaim twice the amount of interest paid, and also the forfeiture of the entire interest. No person shall recover any costs who may endeavor to recover upon a usurious contract.

Judgments. Judgments of the superior court are liens upon the lands and interests of a debtor within the county from the date of docketing the same for the space of ten years. If three years shall elapse since the date of the last execution the judgment becomes dormant, and execution shall only be issued thereon by leave of the court upon motion, with personal notice to the adverse party, and after satisfactory proof that the judgment or some part thereof remains unsatisfied. Transcripts of judgments obtained from a justice of the peace may be docketed in the superior court, and from that time the judgment shall be a judgment of the superior court in all respects. All judgments rendered at a term of the superior court bear date as of the first day of the term, and there is no priority between them in the county of their rendition. A transcript of a docketed judgment properly certified by the clerk, may be filed in the clerk's office of any other county, when it becomes a lien upon the debtor's real estate in that county from the date of the docketing in such county. Judgments of the supreme court may be docketed in the superior court of any county of the State, and when so docketed their lien shall be the same as judgments of the superior court. Judgments of no court constitute a lien upon the personal property before levy.

Limitations. Within ten years: 1. An action upon a judgment or decree of any court of this State, or of the United States, or of any state or territory thereof, from the date of rendition of said judgment or decree. But no such action shall be brought more than once, nor have the effect to continue the lien of the original judgment. 2. An action upon a sealed instrument against the principal there to. Within seven years: 1. An action on a judgment rendered by a justice of the peace, from the date thereof. 2. By any creditor of a deceased person against his personal or real representative, within seven years net next after the qualification of the executor or administrator, and his making the advertisement required by law for creditors of the deceased to present their claims, where no personal service of such notice in writing is made upon the creditor, and the creditor, thus barred of a recovery against the representative of any principal debtor shall also be barred of a recovery against any surety of such debt: Within six years. 1. An action upon the official bond of any public officer. 2. An action against any executor, administrator, collector, or guardian on his official bond within six years after the auditing of his final accounts by the proper officer, and the filing of such audited accounts as required by law. Within three years. 1. An action upon a contract, obligation, or liability arising out or a contract, express or implied, except those mentioned in the preceding sections.

Married Women. A married woman may hold property, both real and personal, free from the debts, obligations, or engagements of her husband. A married woman is authorized to contract and deal so as to affect her real and personal property in the same manner and with the same effect as if she were unmarried, but no conveyance of her real estate shall be valid unless made with the written assent of her husband as provided by section six of article 10 of the Constitution, and her privy examination as to the execution of the same taken and certified as now required by law. The real or personal property of any female in this state, acquired either before or after marriage, shall remain the sole and separate property of such female, and may be devised or bequeathed, and, with the written consent of her husband, may be conveyed her as if she were unmarried. No man, by marriage, shall incur any liability for any debts owing or contracts made, or for wrong done, by his wife before the marriage. 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 of dower, but apparently not her homestead. Married women may confess judgment. The earnings of a married woman by virtue of any contract for her personal services, and any damages for personal injuries, or other tort sustained by her can be recovered by her suing alone, and such earnings or recovery shall be her sole and separate property as fully as if she had remained unmarried.

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 torts committed by such corporation, its agents or employees, whereby any person is killed or any person or property injured. When there are two or more mortgagees or trustees the survivor is authorized to execute power of sale in the mortgage or deed of trust, and so is the executor or administrator of a deceased mortgage. 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 promises must be described in the notice or sale substantially 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.

Negotiable Instruments. (See Bills of Exchange.)

Partnership. A partnership doing business under an assumed name must file with the Clerk of the Superior Court the names of the partners.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

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.

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.

Supplementary Proceedings. Upon an affidavit showing: 1. The return of the execution 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 proceeding 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 on each year. If the party charged has personal property of the value 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.

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. All wills must be 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 sale keeping, and the same shall be in the handwriting of such deceased person, with the name subscribed thereto, or inserted in some part of such will; and if such hardwriting shall be proved by three credible witnesses, who verily believe such will and every part thereof is in the handwriting of this 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.

SYNOPSIS OF

THE LAWS OF NORTH DAKOTA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by PIERCE, TENNESON, CUPLER & STAMBAUGH, Attorneys at Law, Fargo. (See Card in Attorneys' List.)

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, register 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'affairs of the United States resident and accredited in the country where made, secretary or 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 acknowledgment 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.....}
County of.....} ss.

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.....}
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.

Acknowledgment of an attorney in fact must be substantially in the following form:

State of.....}
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.

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 divorce, 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 forty-five 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. Actions involving not more than $200 must be submitted to a concilliator and certificate of such concilliator that an attempt has been made to effect a settlement must be filed in court before process will issue. This does not apply to provisional or remedial remedies or actions involving title to or possession of real estate.

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 cannot 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. 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.

Arbitration. Parties may submit controversies to arbitration under statutory provision.

Arrest. No person can be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be provided by law, or in cases of tort, or where there is a strong presumption of fraud. No female can be arrested except for injury to person, property, or character. An order of arrest may be granted by the order of the court in which the action is brought, when it appears by affidavit that the case is one of those in which arrest is provided for.

Assignments. For benefit of creditors are administered under the supervision of District Court and the public administrator shall be appointed receiver upon his petition or the petition of any creditor. In the absence of application by public administrator or a creditor, the assignee named in the assignment may administer the estate.

Attachment. In actions on contract or judgment for the 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 is a non-resident or has absconded or concealed himself or is about to remove his residence from the county with intention of permanently changing the same and fails or neglects on demand to give security. 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.

Such banking association shall have power to purchase, hold, and convey real estate only for the following purposes:

1. Such as may be necessary for its immediate accommodation, not exceeding 30 per cent of its capital.
2. Such as shall be mortgaged to it as security for debts previously contracted, or as security for loans made.
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 cannot be less in any case than $15,000. All of the capital stock must be paid in before commencing business. 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 not 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 past due indebtedness to the bank, and no dividends can be paid on such stock as long as such liability continues. Every transferee of stock becomes, in proportion to his shares, responsible for one year after the transfer to him for liabilities of prior holders thereof.

The articles of association, or by subsequent resolution or written agreement of a majority of its stock it 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 from net profits, 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.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Reports. At least three reports shall be made each year to the State 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. From January 1, 1926, to January 1, 1927, Association shall at all times have on hand in available funds an amount equal to fifteen per cent of its demand deposits and ten per cent of its time deposits, and from and after January 1, 1927, such reserve shall be twenty per cent of demand deposits and ten per cent of time deposits. Whenever such reserve decreases below such percentages, liabilities shall not be increased nor dividends paid. State Banking Board requires reserve to be made good on thirty days notice and may impose penalty of $100.00 to $500.00 for failure to do so.

Validity of rediscounts and of loans to banks and of pledges to secure loans depends upon compliance with provisions of Chap. 92, Laws 1925, which in general provides: Bank may borrow up to twenty per cent of deposits without prior authorization of State Examiner. Banks may borrow in excess of such twenty per cent only after State Examiner has, upon application, authorized such loan and then only: (a) To restore or protect legal reserve. (b) To protect assets of bank. (c) To avert actual or imminent emergency. Power of bank to pledge assets to secure loans is limited as follows: Not more than one and one-half dollars of face value for each dollar borrowed, excepting loans previously authorized by state examiner, who shall in such case fix amount and kind of assets which may be pledged. Foreclosure of pledge under power of sale prohibited, except where bank is in receiver's hands and then statute prescribes conditions for notice, manner of sale and redemption. Foreclosures, except where receivership exists, is by suit in equity brought in the District Court of the County in which pledgor association is located. Bank has no power to make agreements for repurchase of loans and discounts, bills receivable or other assets disposed of by it.

Power to incur liability by endorsement of notes and bills discounted is limited to an amount equal to ten per cent of bank's deposits. State Examiner by rules and regulations may increase such limit of liability. This limitation does not apply to discount of bills drawn in good faith against agricultural products, raw or manufactured and other commodities of trade, in transit.

No loan, pledge or rediscount may be made without approval by resolution of Board of Directors, to be reported to State Examiner.

All pledges and sales of pledged assets declared null and void if made in violation of this Act.

Penalty for violation or assisting in violation of Act is 1 to 5 years in penitentiary and fine of $100.00 to $1000.00, or both.

Responsibility of Shareholders. Each shareholder shall be individually responsible, equally and ratably, for all contracts and debts to the extent of his stock, 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 cannot 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 may be loaned to any one borrower, including the individual members of a company or firm. The limit of bank loans to one concern not to exceed 15 per cent of the capital or the surplus stock actually paid in may be loaned to any one borrower, including the individual members of a bank or firm; but the discount of bills of exchange drawn in good faith against actual existing value or loans upon produce in transit or actually in stock as collateral security is allowed above 15 per cent.

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.

State 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.

Deposits in state banks not otherwise secured are guaranteed by state depository law. State banks must conform to requirements of guaranty fund commission. Assessments made on state banks to create guaranty fund.

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 organization and make rules for their government, examine all reports and approve or disapprove the same.

The law gives Banking Board power to refuse a charter.

Uniform Negotiable Instruments Law adopted and in force.

Chattel Mortgages. A mortgage of personal property must be signed by the mortgagor in the presence of two witnesses who must sign the same as witnesses thereto, or acknowledge the execution of the same before some official qualified to take acknowledgments. And every mortgagee must surrender to the mortgagor at the time of the execution of the mortgage a correct copy of the original mortgage so signed, with witnesses or acknowledgment shown thereon. And the mortgagor must surrender to the mortgagee a receipt which shall be attached to the original mortgage showing that the mortgagee has surrendered to him a copy of such mortgage, and said receipt must accompany the mortgage when presented to the register of deeds and filed therewith. Mortgages upon crops, other than mortgages securing rental or purchase price of the land, are not valid if included in the same instrument with a mortgage on other personal property.

Collaterals. Collateral note may provide for a sale of securities pledged, in which case the sale may be made on 10 days' notice without court proceedings, but the pledgee cannot legally purchase at the sale unless authorized by the collateral note. (For pledges by banks see special statute referred to above under Banks.)

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. Contracts for sale of real property must be in writing, signed by 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, and as against judgments and attachments. 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 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, and amendments, if any, together with a certificate to the effect that the charter of the corporation has not been cancelled, and that it is engaged in active business under its charter, both of which copies of articles and certificate shall be certified to by the secretary of state of the state in which such corporation was incorporated or by the officer authorized to issue charter to such corporation (or if incorporated in a foreign country, then by the officer authorized to issue such corporate charter). Such corporations must also file in the office of the secretary of state a power of attorney appointing the secretary of state and his successors their attorney, upon 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.

The state has a "Blue Sky Commission" whose requirements must be conformed to before corporate stocks can be sold in the state to persons other than banks, bankers and brokers.

Costs. Costs are allowed to the prevailing party in suits.

Courts. There are six judicial districts. The district courts have exclusive jurisdiction in equity, and at common law, 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. In some counties, the county courts have jurisdiction of actions at law, where claim does not exceed $1,000. Justices' jurisdiction is $200. No costs can be recovered in district court in an action at law where the amount is less than $50. That is the only limitation in the district court.

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; one member of partnership may execute.

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 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 the officer taking the same or by some disinterested 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 appointed by the governor 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 $15,000, all the estate goes to the surviving husband or wife, and all the property in excess of $15,000 in value, one-half thereof goes to the surviving husband or wife, and the other one-half goes to decedent's father and mother in equal shares and if either be dead, to the survivor, and if both father and mother are dead and the decedent leaves no issue, and estate does not exceed $25,000, the whole thereof goes to the surviving husband or wife and the excess is divided one-half to the surviving husband or wife and one-half 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 mother in equal shares and if either is dead, to the survivor. 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, 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 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. 5. 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. 6. If the decedent leaves no husband, wife, or kindred, the estate escheats to the State for the support of the common schools. 7. If deceased be infant, and leaves no heirs, but leaves any person of kin acting as whole foster parent who supports infant the whole estate goes to such foster parent.

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Dower. Dower is abolished. Surviving spouse has homestead ights of same nature as stated below under Exemptions.

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 entry of judgment. 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 of every head of a family residing in this state, not exceeding two acres of land and the improvements thereon if within a town plat and not exceeding in value $8,000.00 over and above liens and encumbrances, and if not witnin a town plat not exceeding in the aggregate more than 160 acres, and consisting of the dwelling house in which the homestead claimant resides and all its appurtenances and other improvements on said land regardless of the value of the same. Husband and wife must join in conveyance of homestead of either. In addition to said absolute exemptions, a head of a family may select from all other of his personal property, goods, chattels, merchandise, money or other personal property up to $1,000. No personal property, except absolute exemptions, is exempt from execution for laborers or mechanics wages, or physician's nurse, or hospital bills, or bills for groceries and provisions or for property obtained under false pretenses. No property is exempt from execution for the purchase money thereof.

A partnership can claim but one exemption of $1,000 in value or alternate property out of the partnership property, and the property so claimed as exempt shall constitute a part of the exemptions of the several partners.

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 amendments of any together with a certificate to the effect that the charter of the corporation has not been cancelled and that it is engaged in active business under its charter both of which shall be filed with the secretary of state 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 principle 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 1st and August 1st of each year, a report showing the location of its principal office, 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, and must show paid up capital stock of at least $100,000 in available cash assets over and above all liabilities for losses reported, expenses, taxes and re-insurance of all outstanding risks.

Garnishment. A creditor may proceed by garnishment. No judgment can be rendered against a garnishee on: 1. By reason of the garnishee having drawn, accepted, made, or indorsed or guaranteed any note, bill, draft, note or other security. 2. By reason of money collected as sheriff or other officer. 3. By reason of money in the hands of 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. Any person including public corporations may be made garnishees when owing or holding property belonging to the debtor. Wages or salary of any person who is the head of a family and a resident of this state to the amount of $15.00 a week are exempt from garnishment.

Holidays. Holidays are every Sunday, January 1st, February 12th, February 22d, May 30th, July 4th, November 11th, December 25th, the first Monday in September, October 12th, every day on which an election is held throughout the State, and every day appointed by the president of the United States, or by the governor of the State, for a public fast, thanksgiving, or holiday. If January 1st, February 22d, July 4th, or December 25th, falls upon Sunday, the Monday following is a holiday. All other days are business days, and any act of a secular nature appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, may be performed upon the next business day, with the same force and effect as if it had been performed upon the day appointed.

Husband and Wife. (See Married Women.)

Interest. Usury. The legal rate of interest is 6 per cent per annum unless a different rate, not exceeding 9 per cent, is contracted for in writing, and contracts shall bear the same rate after as before due, and any contract attempting to increase the rate after maturity is void as to such increase. It is usury to take more than 9 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 four years, and in addition thereto any person who violates this provision shall be guilty of a misdemeanor and on conviction confined in the county jail not exceeding 90 days and be fined not exceeding $300.

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 and exclusive 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.

Land Contracts. Contracts for the sale of land can be cancelled by the vendor by service of a written notice upon the vendee one year before such cancellation is to take effect. Such notice to be served in the same manner as a summons in a civil action. Such cancellation may be had by an action in District Court, where the above notice need not be given, and the court in the judgment determines the time in which redemption may be made.

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. Where a person is entitled to a mechanic's lien for material the owner must sign written consent that lien may be filed if account not paid, and this consent and a notice of intention to claim a lien must be filed in the clerk's office by the contractor or material-man; if not filed, deeds and mortgages first recorded will be prior to the lien.

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 except covenants of warranty, which must be commenced within ten years after the final decision against the title of the covenantor. 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 given by statute; actions 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 any of payment of principal or interest.

Married Women retain their own real and personal property, and may make contracts, sue and be sued as if single. 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. Husband and wife are both liable for necessities while living together. Women may be notaries public.

Mortgages of real property must be in writing, and executed as required in case of a grant of real property. Neither husband nor wife need join the other in mortgage except of homestead. Unless mortgage and assignment of mortgage contain post office address of mortgagee and assignee respectively, they will not be entitled to record. 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 8 per cent interest thereon from date of sale, and also all taxes paid by the purchaser and interest thereon at 8 per cent. Possession of real property sold upon foreclosure not delivered to purchaser until end of year of redemption and debtor is entitled to the possession, rents, use and benefit during the year of redemption. 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 and before statutory attorney's fees are allowed attorney must file with register of deeds before sale, his affidavit that all said fees go solely to him, etc., and that be is a bona fide resident of North Dakota. Thirty days written notice must be given to the record title owner of the mortgaged premises before foreclosure of a mortgage upon real estate can be commenced, either by action or by advertisement. (See also Chattel Mortgages.)

Negotiable Instruments. The law known as the negotiable instrument law, adopted in several States, is in effect.

Notes and Negotiable Instruments. Law of notes and negotiable instruments is substantially what is called the negotiable instrument law adopted by many States. Notes taken for patent rights, stallions, jackasses, lightning rods, patent medicines, or for cure of diseases, or for the sale of the capital stock of foreign corporations, 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, and all claims not properly presented and filed in the county court for adjustment are barred. 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, but if deficiency judgment is desired in foreclosure of lien, claim against estate must be filed for same within the time allowed for filing claims. If a claim is rejected, the claimant may bring suit in proper court according to amount within 90 days after date of rejection if then due, otherwise it is barred forever. No claim barred by the statue 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 exempt. 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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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. An irregular indorser is not considered joint maker and must be given notice of protest to be held.

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, if notice of intention is given at the sale.

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 compiled Laws of 1913. A supplement, containing all laws passed since 1913, is in process of publication.

Service. (See Actions.)

Suits. (See Actions.)

Taxes. All personal property taxes becomes due on the first day of December in each and every year for which the tax was levied and become delinquent on the first day of March next after they become due, and thereupon a penalty of 5 per cent attaches and is charged upon all delinquent taxes, and thenceforth there is charged interest at the rate of 1 per cent per month on the original amount of taxes until same is paid. On the 15th day of October following the year in which personal property taxes are levied, the list of such uncollected taxes is turned over to the Sheriff of the County who immediately proceeds to collect the same.

All real estate taxes become due on the first day of December in each and every year for which taxes are levied and one-half thereof becomes delinquent on the first day of March following. If said one-half becoming delinquent on March 1st shall remain unpaid after that date, there attaches thereto a penalty of five per cent and on the first day of November following, a further penalty of three per cent on the original one-half which became delinquent on March 1st, as aforesaid. The other half shall become delinquent on the 15th day of October, and if unpaid on that date, a penalty of five per cent shall be added thereto. On the second Tuesday in December following the year for which taxes were levied, the county Auditor sells lands for unpaid taxes. Land sold for taxes may be redeemed at any time within three years from the date of sale by any person or corporation having an interest therein, who shall pay unto the Treasurer of the County for the credit of the person entitled thereto, the amount paid by the purchaser at the time of sale with a penalty of 3 per cent and interest thereon at the rate specified in such certificate of sale, which interest cannot exceed nine per cent, together with all amount of subsequent taxes, penalties and interest paid by the holder of such certificate of sale up to the date of redemption with interest at the rate of three-quarters of 1 per cent per month from the date of payment of such subsequent tax, which date of payment shall not be prior to the day upon which subsequent taxes became delinquent. Taxes and special assessments become a lien between grantor and grantee on the first day of December in the year levied. No deed can be recorded after December first in each year when taxes become due 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 Banks).

Wills. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal. An holographic will is one entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed. Every will other than a nuncupative will, must be in writing. The words "writing" and "written" include "printing" and "printed," except in case of signatures, and where the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made. This applies to all instruments and papers. Every will, other than an holographic will and nuncupative will, must be executed and attested as follows: It must be subscribed at the end thereof by the testator himself, or some person in his presence, and by his direction must subscribe his name thereto; the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and there must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request and in his presence. A witness to a written will must write, with his name, the place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. A will of real or personal property, or both, or a revocation thereof, made out of this State by a person not having his domicile in this State, is as valid, when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this State and according to the provisions of the laws of this State. No provisions made for proof of wills made out of the State different from those made within. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. A will executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband. If after making a will, the testator marries and has issue of such marriage, and the wife or issue survives him, the will is revoked unless provision has been made for such issue or unless such issue are provided for in the will, or in such way mentioned therein as will show an intention not to make such provision, and no other evidence to rebut the presumption of such revocation can be received. If after making a will, the testator marries and his wife survives the testator, the will is revoked unless provision has been made for her by marriage contract or unless she is provided for in the will, or in such a way mentioned therein as to show an intention not to make such provision, and no evidence to rebut the presumption of revocation must be received. 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

Revised by Messrs. STEARNS, CHAMBERLAIN & ROYON, Attorneys at Law, 1490 Union Trust Bldg., Cleveland.

(See Card in Attorneys' List.)

Acknowledgments. A deed, mortgage, a power of attorney for conveyance or 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 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, it is 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 except one acting in the position of a trustee or a person in whose name a contract is made for the benefit of another, may sue in his own name. 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. Banks and trust companies may be appointed. Special proceedings by petition are provided for where death is presumed from seven years absence. Executors and administrators required to give bond in such sum as the court shall order. Securities of large estates may be deposited in Banks subject to order of Court and amount of bond diminished. Executors may be excused from giving bond where will so directs unless interested parties object. Inventory and appraisal of decedent's estate shall be filed in the probate court within thirty days after appointment. 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 six (6) months from the appointment of the administrator or executor. Suit is barred on a claim six months after its rejection; it is deemed rejected if the executor or administrator refuses to indorse his allowance on the claim. 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 twelve (12) months after appointment, and every twelve months thereafter. Real estate in hands of bona fide purchasers or encumbrancers ceases to be liable for debts of deceased unless letters of administration are issued within four years after death of debtor. Exception—Mortgages or other recorded liens.

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.

Arbitration. Any controversy, except as to possession or title of land, may be arbitrated under bond to abide award. Legal process may issue to compel attendance, oath being administered by judge or justice. The award is written and signed by arbitrators or a majority and filed in court named in bond or in common pleas of county. At next term after filing judgment may be entered on award. Award for other relief than money is enforceable by contempt. Award may be set aside for fraud, corruption, etc. Controversies before justices may be arbitrated, likewise trade disputes and disputes as to value of stock of dissenting stockholders in railroad companies when property sold or leased to another company.

Assignments. Voluntary assignments for the benefit of creditors may be made and are administered in the insolvency court, or probate court. Assignee must give bond, make inventory and appraisement and give notice. Creditors must file proof of claims within six months after notice, and if rejected must file suit thereon witnin 30 days. Assignee reports at expiration of eight months. Assignment to prefer creditor operates for benefit of all. Assignment with intent to hinder, etc., creditors void and operates for benefit of all. Preferred claims are taxes and labor.

Attachment in a civil action for the recovery of money may be had when defendant is a non-resident or a foreign corporation, excepting such foreign corporations as by compliance with the law therefor are exempted from attachment as such, 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, or claim is for work, or labor, or necessaries. 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 judgment or decree, or for causing death, damage to property 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 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

for FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

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. Attachment may be discharged by motion if wrongfully obtained or by bond.

Banks. Under the State constitution the legislature cannot authorize banks of issue. Savings and loans associations, and trust companied are provided for by statute. Each such bank must report to the superintendent of banks on oath quarterly, which report must be published. Banking institutions may invest in: (a) Commercial Banks. 1. Collateral securities. 2. Bonds of the United States or those for which the faith of the United States is pledged to provide payment of the interest and principal, including bonds of the District of Columbia; also bonds or other interest bearing obligations of any foreign government. 3. Bonds of interest bearing obligations of this or any other state of the United States. 4. Legally issued bonds or interest bearing obligations of any city, village, county, township, school district, or other district, or political subdivision of this or any other state or territory of the United States. 5. Mortgage bonds, collateral trust bonds or notes of any regularly incorporated company which has earned for at least four years an amount in excess of all fixed charges equal to double the interest charges required to be paid. Such loan shall not exceed 50 per cent of the actual value of the property securing such loan. 6. Notes secured by mortgage on real estate, where the amount loaned thereon, inclusive of prior encumbrances, does not exceed 40 per cent of the value of the real estate if unimproved and if improved 60 per cent of its value including improvements, which shall be kept adequately insured. Not more than 50 per cent of the amount of paid in capital, surplus and deposit of such bank, at any time, shall be invested in such real estate securities.

(b) Savings Banks may invest in: 1. Any of the investments that can be made by Commercial Banks, except that they may loan 60 per cent of the amount of paid in capital, surplus and deposits on notes secured by mortgage on real estate. But all loans made upon personal security shall be payable and to be paid at a time not exceeding six months from date. In the aggregate not exceeding 30 per cent of the capital, surplus and deposit shall be so invested. 2. Stocks which have paid dividends for five consecutive years next prior to the investment, when this is authorized by affirmative vote of board of directors. No purchase or investment shall be made in stock of any other corporations organized or doing business under the same banking statutes of this State, or the National Banking Act of the United States. 3. Promissory notes of individuals, firms or corporations when secured by a sufficient pledge of collateral, approved by the directors, provided such loan shall not exceed 20 per cent of its paid in capital stock and surplus. [The codification of the Ohio Banking Laws, effective July 1919, should be consulted for further provisions.]

Foreign Banks may lend money but can do no other banking business in Ohio.

Blue Sky Law. The Ohio Blue Sky Law provides no "dealer" shall offer or dispose of in Ohio any security without first obtaining license—conveyance of real estate, bona fida real estate mortgage bonds if more than fifty per cent of the entire issue is sold to one purchaser, securities of quasi public corporations or obligations of any supervised bank are however specifically exempt from the above. A "dealer" is defined to include any person or company disposing of of its own securities, except; (1) an owner, not the issuer thereof for his own account or when not in course of successive transactions; (2) disposal pursuant to a trust; (3) a bank subject to examination; (4) sale to a licensee by other than the issuer; (5) sale by a pledgee; and (6) an issuer organized in Ohio for his sole account, without any commission and at a total expense not exceeding two per cent, plus $500.00, and when no part of stock is issued for patents, services, good will or property outside of the state upon statement filed to this effect.

Applications for license made to Division of Securities, Columbus, Ohio, must give detailed information as specifically provided by statue and severe penalties are provided for fraudulent statements.

Chattel Mortgages. Unless possession is given chattel mortgage is void as to creditors, subsequent purchasers and mortgagees in good faith, unless filed with county recorder. Oath of mortgagee must be attached showing amount due and that same was executed in good faith. Mortgage must be re-filed within thirty days before expiration of three years of original filing with new affidavit. It is a criminal offense to sell, secrete, or remove mortgaged property. Both husband and wife must execute mortgage on personal household property. Trust receipts, signed by persons importing goods or merchandise or purchasing a readily marketable stable for manufacture or sale by the signer of the receipt, issued in good faith to a person who pays part of the purchase price of such goods and who holds title to secure the repayment of the amounts paid and who upon faith of the trust receipt delivers possession of the goods to the signer with permission to sell or manufacture the same, are valid against creditors of the signer.

The holder of the trust receipt, shall, however, previously file with the Recorder of the County where the person signing the receipt lives or has his principal place of business, or of the county where the goods are located, if the signer is non-resident, an affidavit setting forth the name and address of the signer of proposed trust receipts and of the person to whom the same are to be issued and setting forth that the signer has arranged to finance the purchase of such goods by trust receipts, the kind of goods to be covered by the receipts to be described in general terms. This affidavit protects such receipts for three years after it is filed.

Conditional Sales. Where personal property is sold to be paid for in installments or rented to be paid for in installments, or delivered under conditional sale, reservation of title in seller is void as to creditors of the buyer unless instrument is executed, verified and filed as required of chattel mortgage. Vendor cannot maintain possessory action without returning at least 50 per cent of amount paid where it exceeds 25 per cent of the contract price, anything in the contract to the contrary notwithstanding and whether such condition be expressed in the contract or not unless such property has been broken or actually damaged, when a reasonable compensation for such breakage or damage is allowed. Where property consists of machinery, equipment, and supplies for railroads and contractors, for manufacturing brick, cement, and tiling, or for quarrying and mining purposes, no sums need be returned.

Consignments. A carrier, warehouse man, factor, storage, forwarding or commission merchant, or his clerk, agent, or employe, who, with intent to defraud, in any way disposes 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.

Corporations. (Domestic.) Domestic corporations are formed under general laws and for any purpose except professional business. Each stockholder is liable on his stock for any amount unpaid thereon and stockholders in corporations authorized to receive deposits are also liable for a further amount equal to the par value of the stock held by them. Articles are filed with secretary of state and must show name, location and purpose of corporation, amount of capital stock, number of shares, must be signed by five or more persons, three of whom are residents of Ohio, must be acknowledged before officer whose official character is certified to by clerk of common pleas court. Corporations are for profit or not for profit. If for profit, must have not less than five or more than fifteen directors, of whom the majority must be citizens of this state and each a holder of stock. Stock is personal property. Capital stock may be increased or diminished. Fee for incorporation one-tenth of one per cent of stock, but not less than $10. Trustees of corporation not for profit are personally liable for debts. Insurance and certain other companies are incorporated under special laws. Reports must be made to secretary of state annually in April, and fee of one-half of one percent on the fair value of an asset basis of its capital stock be paid, in no case less than $15.00. The corporation's name must end with "company," "corporation," "Incorporeted," or "Inc." Corporations may be formed with or without par value stock.

Foreign Corporations. Foreign corporations except for banking or insurance must have certificates from secretary of state before doing business in Ohio. Certificate should be obtained by bank intending to do trust business in Ohio. To get certificate corporation must file sworn copy of charter, state amount of capital stock, business, and purposes of corporation, and fix place in Ohio for its office and designate person upon whom process can be served. Fee varies from $15 to $50 according to capital stock. Failure to get certificate bars suit. Foreign corporations having part or all of its capital or plant in Ohio shall file statement with secretary of state showing amount of capital stock, and shall pay fee of one-tenth of one per cent upon the proportion of its authorized capital stock represented by property owned and used and business transacted in this State, but not less than $10 in any case. Non-compliance bars suit and subjects corporations to penalties. Upon compliance corporations are not subject to attachment for non-residence. Annually, in April, Foreign Corporations shall report to the Secretary of State and pay a fee of one-twelfth of one percent upon the fair value or on asset basis of that proportion of its capital stock represented by its property in Ohio and its business done in Ohio, in no case less than $15.00. Foreign Corporations may hold title to land proper for their corporate uses.

Costs. No costs allowed to successful party as and for attorney's fees.

Courts. Supreme Court—Court of last resort. A court of error with original jurisdiction in habeas corpus, mandamus, and quo warranto. Court of Appeals—State is divided into nine districts. Like original jurisdiction as supreme court and appellate jurisdiction and jurisdiction in error from the common pleas court and other inferior courts of record. Its judgments are final except in cases involving constitutional questions and cases of public or great general interest. 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 insolvency court in appropriation proceedings. Justices of the Peace —Exclusive original jurisdiction in amounts less than $100; concurrent jurisdiction with common pleas court in amount from $100 to $300, except in cases involving title to real estate.

Municipal courts for Akron, Ashland, Ashtabula, Canton, Cleveland, Cleveland Heights, Cincinnati, Columbus, Dayton, Hamilton, Lorain, Piqua, Youngstown, East Liverpool, Marion, Massillon, Newark, Springfield, and Zanesville have jurisdiction in their respective cities concurrent with justice courts, and in certain cases concurrent with common pleas courts. Designed to supersede justice courts and relieve common pleas of controversier of $2,500 and less, the amount varying in the different cities.

Insolvency Court established in Cuyahoga County (Cleveland) having jurisdiction in all probate matters in the absence of the Probate Judge, also concurrent jurisdiction with Common Pleas Court in many matters including proceedings in aid of execution, also concurrent jurisdiction with probate Court in appropriation proceedings.

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 a 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 be used only in the following cases: 1. When the witness is absent from, or is a non-resident of the county. 2. When witness is deceased, or unable to attend the trial. 3. Testimony upon a motion, where oral examination is not required. As soon as service is had in a case, either party may begin taking depositions. Written notice of the intention to take depositions must be given the opposite party, specifying the court, parties, time and place of taking, and if the testimony of a party is to be taken, the notice must so specify. Sufficient time must be given the adverse party to reach the place of taking by the usual routes, and also one day for preparation, exclusive of the day of service. The taking of depositions must be continued from one business day to the next. The deposition should be written in the presence of the officer taking the same, and when completed, must be read over by the witness, and by him subscribed, and the officer should then conclude the deposition by the following certificate:

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

.....a ..... in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above named ..... was by me first severally sworn ..... to testify the truth, the whole truth, and nothing but the truth, and that the deposition by ..... subscribed as above set forth, w .. reduced to writing by ....., and w .. subscribed by the said witness ..... respectively in my presence, and w .. continued from day to day, as above set forth, that said deposition w .. taken at the time and place specified in the notice hereto attached, and that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this.....day of....., A.D. 19....

[Seal.] (Signature and official title.)

Depositions out of the State may be taken before a judge, justice, or chancellor of any court of record, justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, a commissioner appointed by the governor of the State, or any person authorized by special commission.

Descent and Distribution. Ancestral real estate (acquired by descent or devise or deed of gift from any ancestor) descends (1) To the children or their legal representatives (lineal descendents). (2) To the husband or wife relict for life. (3) To decedent's parents for life, (4). To the decedent's brothers and sisters of the blood of the ancestor from whom the estate came, or their legal representatives. (5) If estate came by deed of gift, to the ancestor who gave it, if still alive. (6) To his children or their legal representatives. (7) To the relict of the ancestor if a parent of decedent. (8) To the ancestor's brothers and sisters or their legal representatives. (9) To decedent's brothers and sisters of the half blood, though not of the blood of the ancestor. (10) To decedent's next of kin of the blood of the ancestor, or their legal representatives. (11) To the husband or wife, relict, absolutely. (12) To descedent's next of kin. (13) To step-children. (14) To brothers and sisters in law.

Non-ancestral real estate descends (1) To children or their legal representatives. (2) To the husband or wife, relict. (3) To decedent's parents for life. (4) To decedent's brothers and sisters of the whole blood or their legal representatives. (5) To those of the half blood or their legal representatives. (6) To decedent's parents

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

equally, or if one be dead, all to the other. (7) To decedent's parents equally, or if one be dead, all to the other. (8) To decedent's next of kin or their legal representatives of decedent's blood. (9) To step-children. (10) To brothers and sisters in law.

Personal property descends (1) To children or their legal representatives. (2) To the husband or wife, relict. (3) One-half to decedent's parents and one-half to his brothers and sisters of the whole blood, or their legal representatives, or to those of the half blood, if there are none of the whole blood. If there is no surviving parent the first half goes along with the second. If no brothers or sisters, or their legal representatives of either the whole or the half blood, the second half goes to the parents. (4) To the next of kin or their legal representatives of the blood of the decedent.

If decedent, having no issue, leaves real or personal property which came to decedent from a former deceased husband or wife, it descends to the children of the deceased spouse, or their legal representatives, or if none, then one half to the brothers and sisters of the deceased husband, or their legal representatives and one-half to those of the deceased wife. All the foregoing is subject to dower rights, and to the widow or widower's right to one-third of the deceased's personal property.

Dower. Is a one-third interest for life in real property of which the deceased consort was seized in fee at any time during the marriage and in any interest held by the deceased in real property at the time of death. The surviving spouse also gets one-third of the personal property. Dower may be barred by divorce, by deed executed for that purpose, or by taking under the deceased spouse's will unless the provision by the will is plainly in addition to dower. Election to take under the will is presumed if no election is made within one year from date of citation to elect, or from date of probate if no citation to elect is issued.

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 cannot be sold for less than two-thirds of such appraisement. There is no redemption of lands after sale; and stay of execution is allowed in any case taken to higher court. 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, and in Municipal Court on judgment for $50 and under for 150 days and over $50 for 180 days. No stay on judgment in favor of any person for wages due for manual labor performed.

Exemptions. Every unmarried person may hold exempt from execution, attachment or sale, wearing apparel not exceeding $100.00 in value and tools and implements for carrying on his profession, trade or business not exceeding $100.00 in value. Every head of family and every widow may hold exempt (1) Wearing apparel, beds, etc., two stoves, fuel for sixty days, $50.00 worth of provisions, family books and pictures, specimens, etc., of natural history or science unless kept for gain; tools and implements not exceeding $200.00 in value, live stock and household furnishing not exceeding $150.00 in value. Ninety per cent (90%) of debtor's personal earnings for thirty days, not exceeding $75.00, when it is shown the earnings are necessary to debtor's support. Only eighty per cent (80%) exempt against claims for work, labor or necessaries. The thirty day period dates from the time the earnings are garnisheed. (3) In lieu of homestead, husband and wife living together, widows and unmarried females having custody of minor child of deceased relative, may hold exempt in addition to above chattels, real or personal property not exceeding $500.00 in value. Wages and passenger automobiles cannot be held in lieu of homestead. No personal property is exempt from execution under judgment for its purchase price.

Regalia, etc. of benevolent societies is exempt. Property of municipality or fire companies for extinguishing fires is exempt, but owner may mortgage.

Guarantee Companies. The law provides that guarantee companies complying by deposit of securities are accepted on statutory bonds.

Holidays. Every Sunday and the first Monday in September (Labor Day) are holidays for all purposes, the first Tuesday after the first Monday in November (election day) from 12 o'clock noon to 5.30 o'clock P.M.; also, every Saturday afternoon from twelve o'clock noon. For holidays as to presenting, etc., of commercial paper, see Notes and Bills.

Homestead. Husband and wife living together, widow or widower living with unmarried daughter, or unmarried minor son may hold exempt family homestead not exceeding $1,000 in value. Wife may make demand if husband refuses, but neither can demand if other has a homestead. Where a homestead is sold for lien, owner may exempt $500 out of excess in lieu of homestead.

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, except that corporations may pay higher than 8 per cent on loans maturing in not less than one year. Interest is computed upon judgments and decrees at the rate specified in the instrument upon which said judgment or decree is rendered. Interest is not recoverable on open running accounts, when there are no circumstances from which an agreement to allow interest can be inferred, and there has been no vexatious delay of payment. Open accounts draw interest after statement is made and account rendered. Interest from and after maturity may be allowed on items of wages or salary, payable monthly.

Judgments are a lien on real property of defendant within the county, which lien continues for five years. If execution be not levied within one year from the rendition of the judgment, said judgment shall not operate to the prejudice of any other bona fide judgment creditor. Unless execution is issued within five years, the judgment becomes dormant and ceases to operate as a lien. A dormant judgment may be revived on motion, or by action within twenty-one years.

Liens. Every person who does work or labor, or furnishes machinery, material or fuel, for constructing, altering or repairing a boat, vessel or other water craft, or for erecting, altering, repairing or removing a house, mill, manufactory, or any furnace or furnace material therein, or other building, appurtenances, fixture, bridge or other structure, or for digging, drilling, boring, etc., any oil, gas or other well, or for altering, repairing or constructing any oil derrick, oil tank, oil or gas pipe line, or furnishing tile for the drainage of any lot or land, by virtue of a contract, express or implied, with the owner, part owner, or lessee, of any interest in real estate, or the authorized agent of the owner, and every person who shall, as subcontractor, laborer or material man perform any labor or furnish machinery, materials or fuel to either original or principal contractor, or any subcontractor in the carrying forward, performing or completing such contract, shall have a lien upon the structure, etc., and upon the land whereon the same is located, upon filing in the office of the Recorder in the county in which said labor was performed, or material was furnished an affidavit showing the amount due over and above all legal off-sets, a description of the property to be charged with the lien, the name of the person for whom such machinery, etc., were furnished and labor performed, and of the owner, part owner or lessee, if known. Said affidavit must be filed within sixty days from the date on which the last machinery, etc., shall have been furnished, or the last labor performed.

The original contractor shall, whenever any payment of money becomes due from the owner, or whenever he desires to draw any money from the owner, under such contract, or upon written demand of any mortgagee, make out and give to such owner, etc., a statement under oath showing the name of every subcontractor or laborer in his employ, and of every person furnishing machinery, labor, material, etc., which statement shall be accompanied by a certificate signed by every person furnishing machinery, material or fuel to him showing the amount due them, and shall also deliver to such owner, etc., similar sworn statements from every subcontractor accompanied by like certificates. Until such statements are furnished the owner, contractor, subcontractor, etc., shall have no right of action against the owner or lien, and any payments made by the owner, before such statements are made, or without retaining sufficient money to pay such subcontractors, etc., as shown by said statements, shall be considered illegal and made in violation of the rights of the person intended to be benefited, and the rights of such material men, etc., to a lien shall not be affected thereby.

The liens of subcontractors shall be superior to any already taken by the principal contractor, but have no priority among themselves, except liens filed by persons performing manual labor shall have priority to the extent of the labor performed during the thirty days immediately preceding the date of the performance of the last labor.

The owner, part owner, etc., shall not be liable to the subcontractor, material men or laborers for any greater amount than he contracted to pay the original contractor, and shall be entitled to set off any damages which he may sustain by reason of any failure or omission in the performance of such contract.

The liens date back to the commencement of the construction excavation or improvement and are superior to liens given or recorded after that time, except that an elaborate statute gives priority to later construction mortgages, the proceeds of which are paid out properly. Said lien shall remain six years from and after the date of the filing thereof, but if action is brought within that time to enforce the lien, the same shall continue in force until final adjudication. On sixty day notice action to foreclose must be brought or lien becomes void.

Liens are also given to persons who furnish material for the construction of roads, sidewalks, ditches, drains, etc.

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 three years: Actions to recover charges or overcharges on intrastate common carrier shipments. Within two years: Actions for wrongful death. Within one year: Actions for libel, slander, assault, battery, malicious prosecution, false imprisonment or malpractice; 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. Feme covert may sue and be sued as if sole, and husband shall join only when cause of action is joint. Like proceedings shall be had and judgment rendered as though she were sole. Any interests, legal or equitable, in realty or personalty belonging to women at marriage, or which are acquired by her during coverture becomes her separate property under her sole control, not to be taken for debts of husband or conveyed or incumbered by him, and to be conveyed by her as if sole, (except as to dower of husband). Neither husband nor wife, as such, is answerable for the actions of the other.

Minors. The age of majority for all persons is twenty-one 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.)

Motor Vehicles. Title to motor vehicles is passed by duplicate bill of sale with two witnesses and must be recorded with Clerk of County Court. Considerable data concerning purchaser, manufacturer and vehicle is required and blank forms should be obtained. Speed Limit: Speed must be reasonable under circumstances; More than 15 miles per hour in congested districts, 25 in other portions of Municipal Corporations, or 35 in the country are prima facie unreasonable.

Notes and Bills of Exchange. All bonds, notes, bills, and checks payable at a day certain 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 instrument 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, the 12th day of October, 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 days of the week. When January 1st, July 4th, December 25th, February 22d, or May 30th, fall on Sunday, the following Monday shall be a holiday.

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.

Powers of Attorney. A power of attorney for the conveyance, mortgage, or lease of any estate or interest in real property, shall be signed, attested, acknowledged, and certified in the same manner as deeds, mortgages, and leases.

Practice. Practice is regulated by the code of civil procedure.

Proof of Claims. All claims against an assignee or administrator must be verified by oath of the claimant, his agent or attorney that the same is just and lawful, and that the said amount is now due and unpaid; that there are no set-offs or counter claims, and what if any security the claimant holds. A default judgment may be taken before a justice of the peace on an account thus verified.

Replevin. An order for the delivery of specific personal property shall be issued upon the filing of an affidavit of plaintiff, his agent or attorney, showing: 1. A description of the property claimed. 2. That the plaintiff is the owner of the property, or has an interest therein, stating the facts. 3. That the property is wrongfully detained by the defendant. 4. That it was not taken on process issued against the plaintiff, or if so taken, that it is exempt from execution. An order for the delivery shall thereupon issue, commanding the officer to take possession of the property. The sheriff shall then take the property, and cause the same to be appraised. The sheriff shall deliver the property so taken to plaintiff after the expiration of five days, upon plaintiff's executing to the defendant a bond 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

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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.

Sales of Goods. Sales Code. Contracts to sell need not be in writing unless goods valued at $2500.00 or over.

Sales in Bulk. Sales in bulk of merchandise or fixtures otherwise than in the ordinary course of trade, shall be void as against creditors of the seller unless the purchaser demands and receives from the seller a written list, certified under oath, containing the names, addresses and amounts due each of the seller's creditors and unless the purchaser shall at least five days before taking possession of said goods or paying therefor notify personally or by registered mail, every creditor whose name appears on said list or of whom the purchaser has knowledge, of the proposed sale, the price terms and conditions thereof. Any purchaser not conforming to these terms shall at any time within ninety days after such sale, upon application of any of the creditors of the seller, become a trustee and be held accountable to such creditors for all such goods.

Service. Constructive service may be made by publication for non-residents of State or by personal service outside of Ohio. Service is obtained upon a foreign corporation doing business in Ohio by serving the managing agent in charge of such business.

Statute of Frauds. The usual form, with contracts for commissions for sale of real estate added to those which must be in writing.

Stay of Execution. No stay of execution is allowed, except on judgments renderen by justices of the peace or municipal court, and where cases are taken from a lower to a higher court. For stay of executions in justice courts, see Executions.

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, whicn if found may be subjected to the plaintiff's claim.

Taxes. All property taxes are based on the true value of the property in money. 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 four consecutive years of taxes remain unpaid the State may foreclose and sell the land without appraisal and without right of redemption. If all the taxes and penalties are paid before the sale, the State relinquishes its claim. There is a collateral succession tax. No tax on shares of stock if the corporation pays taxes on its property in the state of Ohio and its franchise fees.

Warehouse Receipts. Same as other states.

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 one year after probate, except by infants and persons of unsound mind or in captivity, and as to such a like period exists after the respective disabilities are removed. 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.

Workmens' Compensation Act. Employers of three or more persons in the same office, shop, etc., should qualify with the Ohio Industrial Commission.

SYNOPSIS OF

THE LAWS OF OKLAHOMA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by OLIVER C. BLACK, Attorney at Law, 721 American National Bank Building.

Oklahoma City, Okla.

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. An acknowledgment by individuals of any instrument affecting real estate must be substantially in the following form, to wit: State of Oklahoma, County of.....ss. Before me, a.....in and for said county and state, on this .....day of.....19....., personally appeared..... and.....to me known to be the identical person.....who executed the within and foregoing instrument and acknowledged to me that.....executed the same as.....free and voluntary act and deed for the uses and purposes therein set forth. Every acknowledgment must be taken under the seal of the officer taking the same; and when taken in this State may be taken before any notary public, county clerk, court clerk or county judge of the county court where the land is situated; and when taken out of the State, it may be taken before a notary public, clerk of a court of record, or commissioner of deeds, duly appointed by the Governor of the State, for the county, state or territory where the same is taken; and when taken in any foreign country, it may be taken before any court of record, or clerk of such court, or before any consul of United States. The date of the commission of the officer taking the acknowledgment must also be given. Deeds executed by an attorney in fact should be acknowledged as the deed of the principal, rather than that of the agent. Corporation Acknowledgment. .....State of Oklahoma, County of.....ss. Before me, ...a notary public (or other officer) in and for said county and state, on this.....day of..... 19...., personally appeared.....to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its (attorney in fact, president, vice-president, or such officer as he may be) and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth. Witness my hand and seal the day and year last above written. .....(Seal).

Administration of Estates. County judge has exclusive jurisdiction. (See Wills.) Notice to creditors to present claims must be given by posting in three public places in county and by publication in a newspaper for two weeks. Claims not presented within four months from date of notice are barred. 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 four months after notice of his appointment. 8. All other demands. Suits may be maintained and defended by foreign administrators.

Appeals. Appeals filed in all cases from the justices of the peace, municipal courts, and board of county commissioners of the county, and from the county court on probate matters where a question of fact is involved to the district court or superior court. Appeal from the county court, superior court and district court, in civil cases, is made direct to the supreme court, and upon criminal cases, from the court of trial to the criminal court of appeals. Appeal may also be had from the corporation commission and such other commissions or courts as are established by law, to the supreme court.

Assignment. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust toward the satisfaction of his creditors, which will not, however, be valid if it be upon, or contain, any trust or condition by which any creditor is to receive a preference; but in such case, the property of the debtor becomes a trust fund to be administered in equity, inuring to the benefit of all creditors. The debtor is insolvent when he is unable to pay his creditors, from his own means, his debts when they fall due. An assignment is void against any creditor not assenting to it. 1. If it tends to coerce any creditor to release or compromise his demand. 2. Provides for the payment of any claim known to the assignor to be false. 3. Reserves any interest in the assigned property to the assignor, or for his benefit, before his debts are paid, except his lawful exemptions. 4. Confers 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, or 5. Exempts the assignee from liability for neglect of duty or misconduct. The assignment must be in writing, subscribed by the assignor, or by his authorized agent, in writing, and must be acknowledged. Within twenty days after the assignment, the assignor must make and file a full and true inventory showing: 1. All the creditors. 2. The place of residence of each creditor if known, and if not, the fact that it is not. 3. The sum owing each creditor, and the nature of the liability, whether arising on written security, account or otherwise. 4. The true consideration of the liability in each case and the place when it arose. 5. Every existing judgment, mortgage or other security for the payment of any debt or liability of the assignor. 6. All property of the assignor at the date of the assignment which is exempt by law from execution, and 7. All of the assignor's property at the date of the assignment, both real and personal, of every kind not exempt, and the incumbrance existing thereon, and all vouchers and securities relating thereto and the value of such property according to the best knowledge of the assignor. The assignor must make affidavit, that the inventory is in all respects just and true, according to his best knowledge and belief. The assignment must be recorded in the office of the county clerk and the inventory must be filed with such officer. If more than one assignor, the assignment, or a copy of it, must be recorded, and a copy of the inventory filed in every county in which any assignor has a place of business. The filing and recording of inventory and assignment must be done in twenty days after the assignment, or it is void Within thirty days after the date of an assignment for the benefit of creditors the assignee must enter a bond to the State, with sufficient sureties, the amount of said bond to be named and approved by the judge of the district court of the county in which the original inventory was filed, and conditioned for the faithful discharge of the trust and due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

Attachment. The plaintiff in a civil action may, at or after the commencement thereof, have an attachment against the property of the defendant: 1. When the defendant or one of the several defendants, is a foreign corporotion, or a non-resident. 2. When the defendant, or one of several defendants, has absconded with intention to defraud his creditors. 3. Has left the county of his residence to avoid the service of summons. 4. So conceals himself that a summons cannot 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 any 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. Fraudulently contracted the debt, or fraudulently incurred the liability or obligation for which suit is about to be or has been brought. 10. Where the damages for which the action is brought are injuries arising from the commission of some felony or misdemeanor, or the seduction of any female. 11. When the debtor has failed to pay the price or value of any article or thing delivered, which by contract he is bound to pay upon delivery. The order of attachment is made by a clerk when there is filed 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 or more grounds for the attachment above enumerated. But the order shall not be issued until an undertaking on the part of the plaintiff has been executed by one or more sufficient sureties approved by the Clerk and filed in his office, in a sum not exceeding double the amount of plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the attachment together with a reasonable attorney's fee if the order be wrongfully obtained; but no undertaking shall be required where the party or parties defendant are all non-residents or a foreign corporation. The order is directed to the sheriff and requires him to attach the lands, tenements, goods, stocks, rights, credits, moneys and effects of the defendant in his county. And orders may issue to the sheriffs of several counties at the same time. The return day of the order when issued at the commencement of the action, shall be the same as that of the summons, and when issued afterwards, it shall be returnable in twenty days. If several are issued, they must be levied in the order received by the sheriff and take precedence as levied. An order of attachment may be granted by the court in which the action is brought or the judge thereof, although the claim is not due, upon the filing of the usual undertaking and the affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just, and when the same will become due, and that the debtor has sold, conveyed, or otherwise disposed of his property with the fraudulent intent to cheat and 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 fradulent intent, or is about to remove his property, or a material part thereof with intent or to the effect of cheating or defrauding his creditors, or hindering or delaying them in the collection of their debts. No bond is required in the attachment of the property of a non-resident person in any court.

Banks. State banks may be organized by three or more persons the majority of whom shall be residents of this State. The capital stock shall be at least ten thousand dollars and shares of stock shall be one hundred dollars each and graduated in amount according to the population of the city in which the company is located. No officer can borrow of the bank in which he is an officer. Fifty per cent of the capital must be paid in to transact business. The stockholder is liable additionally for the amount of stock owned and no more.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

The funds are limited strictly for use in the banking business. The state banks are examined at least twice each year. When the deposits of a bank exceed ten times its capitalization it shall within one year be required to increase its capital stock. The state banks are examined and required to report quarterly each year to the bank commissioner, and reports may be required by the bank commissioner at any time.

Every bank doing business under the laws of this State shall have on hand at all times in available funds, the following sums, to wit: Banks located in towns or cities having a population of less than twenty-five hundred persons an amount equal to 15 per cent of their entire deposits, two-thirds of which amounts may consist of balances due to them from good, solvent banks, selected from time to time with the approval of the bank commissioner, and one-third shall consist of actual cash provided, that any bank that has been made the depository for the reserve of any other bank or banks shall have on hand at all times in the manner provided herein 20 per cent of its deposits. Whenever the available funds in any bank shall be below the required amount, such bank shall not increase its liabilities by making any new loans or discounts otherwise than the discounting or purchasing of bills of exchange, payable at sight, nor make any dividends of its profits, until the required proportion between the aggregate amount of its deposits and its lawful money reserve has been restored; and the bank commissioner shall notify any bank whose lawful money reserve shall be below the amount required to be kept on hand to make good such reserve, and if such banks or association shall fail to do so for a period of thirty days after such notice, it may be deemed to be insolvent, and the bank commissioner may take possession of the same, and proceed in the manner herein provided, relating to insolvent banks. The bank commissioner may refuse to consider as a part of its reserve, balance due to any bank from any other bank or association which shall refuse or neglect to furnish him with such information as he may require from time to time relating to its business with any other bank doing business under this act, which shall enable him to determine its solvency; provided that all savings associations which do not transact a general banking business shall be required to keep on hands at all times in actual cash, a sum equal to 10 per cent of their deposits, and shall be required to keep a like sum invested in good bonds of the United States, or state, county, school district or municipal bonds of the State of Oklahoma, worth not less than par.

A banker has a general lien, dependent on possession, for all that is due him as such, upon all property in his hands belonging to a customer, for the balance due him from such customer in the course of the business.

The law provides that it shall be unlawful for any president, director, manager, cashier, or other officer or clerk of any banking institution to receive, or assent to, or permit a reception of any deposit, or to create or assent to the creation of any debt after having knowledge of the insolvency of the bank, or that it is in a failing condition, and for such violation the offender is subjected to the same penalty as for stealing a like sum; and all officers are jointly and severally liable for the amount lost to any one by such violation, the remedy extending to the executors and administrators of the estate of such officers.

Every bank located within this state shall be assessed and taxed upon the actual value of the shares of stock therein, in the county where such bank is located, whether such stockholders reside in such place or not, less such proportion thereof as is invested in any bonds issued against the Public Building Fund, and less such portions thereof as are invested in real estate situated in the state, which may be separately assessed and taxed. Such shares shall be listed and assessed with regard to the value thereof as that existed on the first day of January, annually. The shares of capital stock of national banks, not located in the state, held in this state, shall not be required to be listed for taxation in this state.

"No Bank, banker or bank official shall give preference to any depositor or creditor by pledging the assets of the bank as collateral security or by selling or transferring any of the assets of any insolvent bank in consideration of any deposit in such bank; provided, any bank, by the unanimous consent of its Board of Directors expressed by resolution duly entered in the Minute Book of such bank, may pledge the assets of such bank as security for township, city, town, school district, benevolent or fraternal association funds deposited in such bank in all cases where no surety bond is given to secure deposits."

Blue Sky Law. It shall be unlawful for any person, co-partnership, association, or corporation, hereinafter called the promoter, either as principal, or through brokers or agents, to sell or offer for sale or by means of any advertisements, circulars, or prospectus, or by any other form of public or private offering, to attempt to promote the sale of any speculative securities in this State, including capital stock of such promoter, unless there first shall have been filed with and approved by the State Issues Commission (1) A copy of the securities so to be promoted; (2) a statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien, authorized or issued by any such person or company; (3) if such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon if any; (4) a full statement of facts showing the gross and net earnings, actual or estimated, of any person or company making and issuing or guaranteeing such securities, or of any property covered by any such mortgage or lien; (5) all knowledge or information in the possession of such promoter relative to the character or value of such securities, or of the property or earning power of the person or company making and issuing or guaranteeing the same; (6) a copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed hereunder; (7) the names, addresses and selling territory in this State of any agents by or through whom any such securities are to be sold, and no such agents shall be employed unless such statement with respect to them has been filed hereunder, and there shall have been paid to the said Commission a registration fee of five dollars ($5.00) for each such agent. The payment of such fee shall be payment in full of all fees for registration of such agent until and including the first day of March next following; (8) the name and address of such promotor, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the directors or trustees, and of any person owning ten per centum, or more, of the capital stock, if the promoter be a corporation or association; (9) a statement showing in detail the plan on which the business or enterprise is to be conducted; (10) the articles of co-partnership or association or corporation and all other papers pertaining to its organization, if the securities be insured or guaranteed by a co-partnership or unincorporated association; (11) a copy of its charter and by-laws if the securities be issued or guaranteed by a corporation; (12) a filing fee of twenty-five dollars ($25.00).

If the said Commission shall decide that the sale of stock or bonds will be fairly and honestly conducted both to the corporation and to the public, such permit shall be granted, provided the commissions, promotion and other incidental expenses, exclusive of exempted expenses, shall not be more than fifteen per cent of the price of which the stock or bonds is sold. Every foreign corporation, before selling or offering for sale, any speculative securities in this state, shall also file its written consent, irrevocable, that actions may be commenced against it in the property courts of any county of the state. The said Comimssion shall at any time have the authority and jurisdiction to investigate the affairs of any speculative enterprise, the securities of which are being sold or offered for sale in this state. Any person who shall knowingly make or file or cause to be made or filed with the Commissioner any statement, document, circular, advertisement or prospectus required to be filed by this Act, which is false in any material respect, shall be guilty of a felony and upon conviction be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment of not less than one nor more than five years in the state penitentiary, or by both fine and imprisonment.

Bogus Checks. Every person who with intent to cheat and defraud, shall issue or use any false or bogus checks shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not to exceed $100 or by imprisonment in county jail for thirty days, or both such fine and imprisonment.

Chattel Mortgages. A mortgage on personal property must be signed by the mortgagor. Such signature may either be attested by acknowledgment before any person authorized to take acknowledgments of deeds, or it may be signed and validated by the signatures of two persons not interested therein. The chattel mortgage or a duly authenticated copy thereof must be filed in the office of the county clerk of the county where the property is situated. A chattel mortgage insufficiently witnessed or unfiled gives no right against any one. It may provide for attorney fee and contain a power of sale. When the conditions of a chattel mortgage have been broken, it may be foreclosed by a sale of the property mortgaged. Notice of such sale shall be given by posting in five public places in the county where the property is to be sold, at least ten days before the time therein specified for such sale. The notice must contain: 1. The names of the mortgagor and mortgagee, and the assignor, if any. 2. The date of the mortgage. 3. The nature of the default and the amount claimed to be due thereon at the date of the notice. 4. A description of the mortgaged property, conforming substantially to that contained in the mortgage. 5. The time and place of sale, and 6. The name of the party, agent or attorney foreclosing such mortgage. The mortgagee, his assigns, or any other person may, in good faith, become a purchaser of the property. If foreclosed by an attorney of record, an attorney fee, if specified in the mortgage, may be taxed as costs. A chattel mortgage is valid for three years from the date of filing with the county clerk. At any time after foreclosure by notice has been commenced and before sale, if it shall be made to appear by the affidavit of the mortgagor, his agent or attorney, to the satisfaction of the judge of the district court that the mortgagor has a legal counterclaim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on the mortgage, such judge may enjoin furtner proceedings and direct foreclosure to be made in the district court. Failing debtor may now prefer one or more of his creditors by mortgage. A chattel mortgage ceases to be valid against creditors, subsequent purchasers of incumbrances in good faith after the expiration of three years from the filing thereof, unless a copy of the mortgage and a sworn statement of the amount remaining due thereon be filed anew in the office of the county clerk of the county in which the mortgager then resides.

Conditional Sales. Any instrument in writing, or promissory note, evidencing the conditional sale of personal property, which retains the title to the same in the vendor until the purchase price is paid in full, shall be void as against innocent purchasers, or the creditors of the vendee, unless the original instrument or a true copy thereof shall have been deposited in the office of the county clerk in and for the county wherein the property shall be kept; and when so deposited, it shall be subject to the law applicable to the filing of chattel mortgages; and any conditional, verbal sale of personal property, reserving to the vendor any title in the property sold, shall be void as to creditors and innocent purchasers for value.

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. 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 should be complied with in word 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 state, and compliance with statute. 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. Capital stock may be increased by compliance with law, but excess of stock over charter limit is invalid. No corporation of any other state or territory may transact business, or hold and dispose of property in this State 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 state. It shall also file a copy of charter or articles of incorporation with the secretary of state and the agent referred to shall reside in the capital of the State of Oklahoma. Must also file with corporation commission list of officers and stockholders with addresses and amount of stock held by each, and name of agent for service.

All corporations, foreign or domestic doing business in State are required to file in office of corporation commissioner list of stockholders, officers and directors, with residence and post-office address, and amount of stock held by each, and must designate an agent residing in State upon whom process may be served. Mining and public service corporations required to submit all labor differences to arbitration. (See Mines.)

Corporations (except mining) must pay annual license tax as follows: Domestic corporations, 50 cents for each $1,000 of its authorized capital. Foreign corporations, $1.00 on each $1,000 of its capital employed in business in State. License obtained from State Corporation Commission. Statement of business done, condition, etc., must be filed annually with Corporation Commission. Mining corporations pay annual gross revenue tax upon output of one-half of 1 per cent upon quarterly statements in lieu of above: Oil and gas corporations required to pay 3 per cent.

No corporation shall be created, licensed, or chartered in this State for the purpose of buying, acquiring, selling, trading or dealing in real estate other than the real estate located in incorporated cities and towns, and as additions to such cities and towns; nor shall any corporation doing business in this State buy, sell, acquire, trade or deal in real estate for any purpose except such lands may be located in incorporated cities and towns and as additions thereto, and except such as shall be necessary and proper for carrying on the business for which such corporation was licensed or chartered; nor shall any corporation be created, licensed, or chartered to do business in this State for the purpose of acting as agent in buying or selling real estate, except as herein provided: Provided, however, that corporations shall not be precluded from taking mortgages on real estate to secure loans or debts or from acquiring title thereto upon foreclosure of such mortgage or in the collection of debts, conditioned that such corporation or corporations shall not hold any real estate so acquired for a longer period than seven years and conditioned that disposition or incumbrance of such land shall in no way be made to another corporation or corporations. The directors of corporations must not make dividends except from the surplus profit arising from the business thereof, nor must they divide, withdraw or pay plus profit arising

or FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

from the business thereof, nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase their capital stock, except as specially provided by law. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation and to the creditors thereof, in the event of its dissolution to the full amount of the capital stock so divided, withdrawn, paid out or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable.

Corporations. An action against a corporation created by the laws of this state may be brought in the county in which it is situated or has its principal office or place of business, or in which any of the principal officers thereof may reside, or be summoned, or in the county where the cause of action or some part thereof arose.

Courts. The courts of the State are: Supreme, District, Superior County, Justice of the Peace, and Courts of Common Pleas. Supreme court has appellate jurisdiction. Justice of the Peace has jurisdiction of civil actions arising upon contract involving amount not in excess of $200, exclusive of interest, attorney's fees and costs. County court has jurisdiction of all probate matters, and civil actions, up to $1,000. But neither the county nor justice's court has jurisdiction of actions upon real estate contracts, libel and slander, misconduct in office, or malicious prosecution. The district court and the superior court have general jurisdiction. Terms of the district court are fixed by the supreme court. County court has a regular term every three months, commencing first Monday in January, April, July, and October in each year. Justice court is always in session. Courts of Common Pleas have only been established in several of the larger counties with reference to population and they are courts of record, having jurisdiction in civil actions up to $1,000.

Days of Grace. No days of grace on negotiable instruments. 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.

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 mother. 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. If the decedent leave a surviving husband or wife, and no issue, and no father or mother or brother or sister, the whole estate goes to the surviving husband or wife. Other more remote descendents particularly set forth. Dower and courtesy are abolished.

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 land 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 or more parcels to be selected by the owner, including improvements; in city or town, not more than one acre in one continuous tract, not exceeding $5,000 in value; 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 75 per cent of current wages and earnings for personal and professional services within last ninety days. If any creditor endeavor to hold on garnishment more than 25 per cent of a person's wages the entire debt will be forfeited. 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 State, or who has absconded, taking with him his family. To a single person: Lots or lot in cemetery held for sepulcher; all wearing apparel, tools, apparatus, and books belonging to any trade or profession; one horse, bridle, and saddle; or one yoke of oxen, 75 per cent of 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 from execution or attachment for wages of clerk, mechanic, laborer, or servant. All pension money is exempt.

*Same provision regarding forfeiture of debt.

Express Trusts. Express trusts may be created in real or personal property or both with power in the trustee or a majority of the trustees to receive title to, hold, buy, sell, exchange, transfer and convey real and personal property for the use of such trust, to take, receive, invest or disburse the receipts, earnings, rents, profits or returns from the trust estate, to carry on and conduct any lawful business designated in the instrument or trust and generally to do any lawful act in relation to such trust property which any individual owning the same absolutely, might do. No such express trust shall be valid unless created: 1st, By a written instrument, subscribed by the grantor or grantors, duly acknowledged as conveyances of real estate and recorded in the office of the county clerk of each county wherein is situated any real estate conveyed to such trustees, as well as in the county where the principal property or business is located or conducted. 2d. By a will duly executed, as required by the laws of the state. Such express trusts shall be limited in the duration thereof to a definite period not exceeding twenty-one years.

Foreign Corporations. Before they shall transact business, they must appoint an agent who is a resident of the capital of the State, on whom process may be served and file a copy of appointment with the secretary of state. Copy of articles must also be recorded with the secretary. Must file statement with corporation commission showing stock holders, officers, amount of business done, etc. Suit may be brought in county in which the cause of action arose. Contracts of corporations are void as to corporation, if law not complied with and no suit can be maintained in the state courts by a corporation which has not complied with the law. For issuing license to a foreign corporation the State charges a fee of one-tenth of 1 per cent of the amount of capital stock. There is also an annual license fee of $1.00 on each $1,000.00 of the capital stock employed in business in the State. This fee must be paid on or before the first of August. In July, each corporation must file with the Corporation Commission, statement, under oath, giving detailed information on blanks furnished by the Commission. Penalty of $100 per day for failure or refusal to file statement and pay fees. Such corporations are required, upon the order of any court where action is pending, to appear at a time and place fixed, for examination of its officers and agents, and inspection of its books, etc.

Mining companies are required to pay an annual gross revenue tax of one-half of 1 per cent of the gross receipts except oil and natural gas companies upon which tax is 3 per cent. Companies required to pay gross revenue tax are not required to pay the annual license tax, one being in lieu of the other.

Foreign Judgments. They are basis of suit as elsewhere, but limitation statute is one year.

Garnishment. May issue 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, before order will issue, statutory undertaking must be given, except in cases against non-residents. Bond is required in District, Superior and County Courts but not in Justice Courts.

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 State, first Monday in September (Labor Day), and days appointed by president, or governor of state for a public fast, thanksgiving, or holiday. Columbus Day, October 20, created a special holiday, provided that nothing in this act shall render illegal the service of process, or the transaction of other business on this day. 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. The first Saturday after the full moon in September of each year has been designated as "Indian Day," and is a legal holiday for all Oklahoma Indian citizens." 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.

Income Tax. Each and every person in this state, shall be liable to an annual tax upon the entire net income of such person, arising or accruing from all sources during the preceding calendar year, and a like tax shall be levied, assessed, collected and paid annually upon the entire net income from all property owned and on other business, trade or profession carried on in this state, by persons residing elsewhere, provided that a husband and wife, having separate incomes liable to taxation, may make separate return thereof.

Interest. Maximum rate is 10 per cent. Usury forfeits all interest, and if usurious interest be paid, double the amount so paid may be recovered by suit inside of two years. In absence of stipulation, legal rate is 6 per cent from maturity. Banks required to make quarterly report of interest charges on loan in excess of 10 per cent. Such reports shall be published in annual report of Bank Commissioner, and when report of any bank shall disclose that it is willfully charging usury, the Governor may direct action by the Attorney General to cancel the bank's charter. No suit upon any contract of $300 or less, or an action in replevin, or to foreclose any mortgage or any lien given as security therefor, shall be maintained in the courts of this state and no petition or bill of particulars shall be filed unless at the time of filing such suit there shall be with such bill of particulars or petition an affidavit setting forth that the contract sued on was not made in violation of the interest laws of this state and that a greater rate of interest than ten per cent has not been charged, reserved or collected. If evidence at the trial discloses usury, the suit should be dismissed at the plaintiff's cost.

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 State, 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 6 per cent per annum, but in case of contract, rate is same as contract, up to 10 per cent.

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, subcontractors, sixty days. Suit must be commenced in one year from time of filing statement, or from maturity of note given for the debt.

Lien on Oil or Gas Well for Labor or Supplies. Any person, corporation, or co-partnership who shall under contract, express or implied, with the owner of any leasehold for oil and gas purposes or the owner of any gas pipe line or oil pipe line, or with the trustee or agent of such owner perform labor or furnish material machinery and oil well supplies used in the digging, drilling, torpedoing, completing operating or repairing of any oil or gas well or who shall furnish any oil or gas well supplies or perform any labor in constructing or putting together any of the machinery used in drilling, torpedoing, operating, completing or repairing of any gas well shall have a lien upon the whole of such leasehold or oil pipe line or gas pipe line, or lease for oil and gas purposes, the building and appurtenances and upon the material and supplies so furnished and upon the oil or gas well for which they were furnished, and upon all the other oil or gas wells, fixtures and appliances used in operating for oil and gas purposes upon the leasehold for which said material and supplies were furnished or labor performed. Such lien shall be preferred to all other liens or incumbrances which may attach to or upon said leasehold for gas and oil purposes and upon any oil or gas pipe line or such oil and gas wells and the materials and machinery so furnished and the leasehold for oil and gas purposes and the fixtures and appliances thereon subsequent to the commencement of or the furnishing or putting up of any such machinery or supplies.

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 writing, express or implied; an action upon a liability created in by

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

statute other than a forfeiture or penalty. 3. Within two years An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud—the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud. 4. Within one year: An action on a foreign judgment; an action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation. 5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five years after the cause of action shall have accrued. 6. An action for relief, not hereinbefore provided for, can only be brought within five years after the cause of action shall have accrued.

Married Women retain the same legal existence and personality after marriage as before marriage, and receive the same protection of all their rights as women which their husbands so as men; and for an injury sustained to their reputation, person, property, character, or natural rights have the same right to appeal in their own names to courts of law or equity for redress and protection that their husbands have in their own names.

Mortgages of Real Estate. Must be executed and acknowledged as deeds and the first mortgage recorded has preference. They are foreclosed by suit in the district or superior courts, and there is no redemption on land sold in foreclosure after confirmation of the sale by the court.

Notes and Bills of Exchange. The uniform negotiable instrument law is in force. 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. 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 as follows: 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.)

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.

Protest. (See Notes and Bills of Exchange.)

Records kept by clerks of all courts of proceedings therein. County clerk keeps record of all instruments affecting real and personal property.

Redemption. If appraisement be waived, sale can not be made until six months after date of judgment. 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. Plaintiff must file statutory affidavit and bond in not less than double value of property. Defendant in twenty-four hours may give bond and retain possession.

Sales. Sales of stocks of merchandise other than in the ordinary course of trade are presumed fraudulent and void as against creditors. Such presumption can only be rebutted by showing that 10 days before sale, the purchaser received from seller a list of his creditors, their addresses and amounts due them, sworn to by seller as being a correct list, and 10 days before sale, creditors were notified personally or by registered mail. Purchaser must show that purchase was made in good faith for a valuable consideration, actually paid. These regulations do not apply to sales by executors, administrators, receivers or public officers.

Statute of Frauds. 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 by 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 a few cases. 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 $50, unless the buyer accept or receive part of such goods and chattels, or the evidence of some of them of such things in action, or pay at the same 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 was made, is 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.

Suits. (See Courts.)

Taxes. All property is subject to taxation, except public property and the grounds and buildings of any library, scientific, benevolent or religious institutions devoted solely to the appropriate objects of such institutions, and not used with a view to pecuniary profit, and the books, papers, furniture, scientific or other apparatus pertaining to the above institutions, family provisions for one year, and family portraits. As between grantor and grantee of any land where there is no expressed agreement as to who shall pay the taxes, that may be assessed thereon, taxes on any real estate shall become a lien on such estate on the 15th day of October of each year, and if such real estate is conveyed after such date the grantor shall pay such taxes and if conveyed on or prior to October 15th of such year, the grantee shall pay such taxes. All property is assessed at its cash value. If the first half of the taxes, levied upon ad an valorem basis for any fiscal year, shall have been paid on or before the first day of January, the second half shall become delinquent on the 15th day of June, thereafter. All delinquent taxes, shall, as a penalty, bear interest at the rate of 18 per cent per annum. Taxes on real estate are a perpetual lien. No demand of taxes is necessary. Taxes shall become due on the first day of November of each year and unless one-half of the taxes so levied shall be paid on or before the first day of January, the entire tax levied for such fiscal year shall become delinquent on said date.

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, negotiable 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. No married man can bequeath more than two-thirds of his property away from his wife, and no married woman can bequeath more than two-thirds of her property from her husband. A will is revoked by a subsequent marriage, unless provision is made for wife by marriage contract or will.

SYNOPSIS OF

THE LAWS OF OREGON

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by Messrs. BEACH & SIMON, Attorneys at Law, 710-712 Board of Trade Bldg , 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. Accounts are assignable either verbally or in writing and the assignee may sue thereon in his own name, but the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of, or before notice of the assignment. This does not apply to negotiable promissory notes or bills of exchange transferred in good faith and upon good consideration before due.

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. In any other state, territory, or district of the United States, according to the laws of such state, territory, or district; or of this State, before the judge of a court of record, justice of the peace, notary public, or other officer authorized by the laws of such state, territory, or district, or before any commissioner appointed by the governor of this State for that purpose. Foreign countries: Deeds may be acknowledged according to the law of such country, or of this State before any notary public therein, minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, counsel, vice-counsel or counsel general of the United States, appointed to reside therein.

Actions. 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. The complaint, answer, and reply must be verified. Summons must be subscribed by plaintiff or his attorney who shall be a resident attorney of Oregon, and who shall state his residence or post office address thereon, Laws 1917. A defendant must appear, plead, or answer within seven days in the Justice and District Courts, and in the Circuit Court 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.

Administration of Estates. The county court of the county in which the deceased was an inhabitant when he died has exclusive jurisdiction in the first instance. Except that the administration of estates in Multnomah County is vested in the Circuit Court while in all other counties it is in the County Court. Letters shall be issued as follows: 1. To the widow, husband, 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. An action may be commenced against an executor or administrator any time after the expiration of six months from the granting of letters testamentary, or of administration, and until the final settlement of the estate and discharge of such executor or administrator from the trust, and not otherwise. Presentation of the plaintiff's claim to the executor or administrator and disallowance by him is a condition precedent to the bringing of action. 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, and upon proper showing to the county court, executor or administrator may execute deeds of conveyance to fulfill bonds or contracts to convey real property, made by the deceased. Executor or administrator must publish notice of his appointment, and make and file an inventory of the estate which must be appraised by three competent persons appointed by the court.

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, or before a notary public having a seal and acting as such by authority of any state or territory of United States or District of Columbia. The seal must be affixed together with the expiration of the notarial

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

commission. 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, twenty-one years; females, eighteen years.

Aliens. All aliens except Chinese or Japanese have the same right with reference to holding property in this State as citizens 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 and may sue and be sued.

Appeals. An appeal from the Justice and District Courts may be taken within thirty days, and from the Circuit Court to the Supreme Court by serving and filing the notice of appeal and bond at any time within thirty days from the date of the judgment or decree appealed from. Time may be enlarged by order of Supreme Court secured before the thirty days has expired, but shall not extend beyond the term of Appellate Court next following the appeal.

Arrest. Arrest in civil cases is allowed in certain cases, but is a remedy very rarely resorted to. Sec. 259 L. O. L.

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 in a sum not less than $100 and 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. The constitution of the State prohibits the incorporation of any bank or banking company, or moneyed institution for the purpose of 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 state banking act provides that any person, firm, or corporation (except national banks) having a place of business within this State, where credits are opened by the deposit or collection of money or currency or negotiable paper subject to be paid or remitted upon draft, receipt, check, or order, shall be regarded as a bank or bank and as doing a banking business under the provisions of said act. The word bank includes the banking or savings department of any trust company doing banking or savings business. Not more than 25 per cent of the assets of any bank, under state supervision, shall be invested in the stock of corporations. Chap. 285 of Laws of 1915 allow state banks to become members of a Federal Reserve Bank by purchasing stock therein.

Co-operative bank can be started by ten or more persons. Minimum capital, $10,000. Stockholder limited to one-tenth of total capital stock. Works under state banking laws.

Foreign banks and bankers shall be subject to the act.

Banking corporations (and Trust Companies as amended by Laws of 1917) may be formed under Chapter 171 of the Laws of 1911 by any number of persons, not less than three citizens of the United States and residents of Oregon, associating together, and must have a capital stock as follows:

In cities, villages, and communities having a population of 1,000 inhabitants or less, $15,000; population over 1,000, and not over 3,000, $25,000; population over 3,000, and not over 20,000, $50,000; population over 20,000 and upwards, $100,000. These provisions do not apply to banks in existence before 1911. And where cities have a population of 50,000 or more, banks may be organized with a minimum capital of $50,000, when located at least two miles from central post-office of such city. Loans to one debtor limited to 20 per cent of capital paid in, and surplus, certain discounts of commercial paper not being included in the 20 per cent limit. Entire capital of state bank must be paid in within six months from date charter is issued. One-tenth of net profits of bank must be put in the surplus fund until surplus equals 20 per cent of paid in capital. Reserve bank must have at least $75,000 unimpaired capital and surplus.

No state bank can invest in any but Federal Reserve Bank stock, except such as it may acquire to save a loss on a pre-existing debt but this must be sold within twelve months of acquiring.

Banks must have in cash 15 per cent of total demand deposits and 10 per cent of total time and savings deposits provided that two-thirds of reserve may be demand deposits in banks or trust companies approved by superintendent of banks.

Any bank may loan not to exceed 50 per cent of its capital, surplus and commercial deposits, upon notes secured by mortgages or other real estate security, but no single loan to exceed 50 per cent of market value of the real estate security given. No officer, director or employee can borrow from the bank, except by approval of directors, and such approval must be a matter of record.

Every director must be the owner of at least $500 worth of stock, par value. Board of directors shall meet once every three months and examine report of cashier. If approved, it must be signed by all directors present and made a part of the record. A committee of stockholders must make semi-annual examination. Superintendent of Banks shall periodically call for sworn reports showing bank's condition, abstract of which banks must publish. If Superintendent shall be of opinion that any bank is insolvent he may, in his discretion, take immediate possession, and a receiver may be appointed. Stock or shareholders of every corporation bank shall be assessed and taxed on the value of their shares.

Blue Sky Law. Requires all dealers engaged in the sale of corporation securities to furnish to the Corporation Commissioner:

A copy of the securities; a copy of the new prospectus or advertising matter; a statement in substantial detail of the assets and liabilities of the corporation proposing to issue such securities; a full statement of facts verified by the executive officers of the corporation and three directors showing the gross and net earnings for the preceding year of the corporation proposing to issue such securities; the names and addresses of the officers and directors; purpose of issue; description of property and business to be followed.

The dealer must also obtain a permit to carry on business and apparently a license and pay a small registration fee.

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.

Conditional Sales. Conditional sales of personal property that thereafter becomes attached to real property so as to become a fixture, must be recorded within ten (10) days in order to bind purchasers and mortgages of the real property. (Laws 1909.)

Conveyances. (See Deeds, Acknowledgments, Mortgages.)

Contracts. Contracts not to be performed within a year, contracts to answer for the debt, default, or miscarriage of another, contracts by an executor or administrator to pay the debts of his testator or intestate out of his own estate, contracts made upon consideration of marriage, other than a mutual promise to marry, contracts for the sale of personal property at a price, not less than $50, unless the buyer at the time receive part or pay part, contracts for the leasing for more than one year, or for the sale of real property or any interest therein, contracts entered into subsequent to May 20, 1909, authorizing an agent or broker to sell or purchase real estate for compensation or commission, are void unless the same or some note or memorandum thereof, expressing the consideration, be in writing and subscribed by the party to be charged.

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.

Corporations work under Corporation Department created by Chap. 341 laws of 1913. A blue-sky law is also incorporated in this chapter.

According to Chap. 112 Laws of 1915 all powers granted or assumed by any corporation may subsequently be amended, altered or repealed.

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 or special meeting of the stockholders of such corporation, called for that purpose), and the conveyance be in consideration of lawful money of the United States.

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 up.

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 resident of the State of Oregon, except that in mining corporations and common carrier railroads a majority of the directors may reside out of the State.

The stockholders are liable for the indebtedness of the corporation to the amount of their stock subscribed and unpaid for, and no more, excepting that the stockholders of corporations or joint stock companies conducting the business of banking shall be individually liable equally and ratably and not one for another, for the benefit of the depositors of said bank, to the amount of their stock at the par value thereof, in addition to the par value of such shares.

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 together with the annual license fee due for the succeeding fraction of the fiscal year. Annual license fee is $200.

Foreign corporations doing business in State may withdraw by filing notice thereof with Corporation Commission and paying fee of $5.00 but must thereafter maintain attorney in fact within State upon whom service may be had until statute of limitations has run. Failure to do so, service may be made on Corporation Commissioner, Laws 1917.

Failure of foreign corporations, other than educational, to pay any license fee shall render void its right to transact business in Oregon.

Public service corporations doing business in the State shall establish and maintain at some fixed point within the State a principal office, and shall maintain thereat a secretary or managing agent.

Both domestic and foreign corporations, excepting only those hereinafter mentioned, and those organized for any educational, literary, scientific, religious or charitable purpose, pay a graduated annual license fee based on their authorized capital stock as shown by annual report required. The following is the statutory form of acknowledgment:

State of Oregon, ...
County of..... } ss.

On this.....day of....., 19....., before me appeared ..... to me personally known, who, being duly sworn (or affirmed), did say that he is the president (or other officer, officers or agent of the corporation) of (describing the corporation), and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said .....acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal this the day and year first in this, my certificate, written.

.....(Title of officer taking acknowledgment.)

My Commission expires.....or district.

Costs. If plaintiff is a non-resident of the county, in a justice court, the justice may require him to give an undertaking for costs. Costs follow the judgment in justice's court irrespective of the amount recovered. In courts of record, if plaintiff recovers, he is entitled to cost in actions involving open mutual accounts where the total of both parties exceed $150; in other actions for the recovery of money or damages if he recovers $50 or more.

In courts of equity, costs are discretionary with the judge.

Attorneys representing non-resident clients are responsible for costs.

Courts. The District court has limited criminal jurisdiction and civil jurisdiction up to $300. 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.

Creditors' Bills. General rules of equity govern.

Curtesy. The widower of every deceased person shall be entitled to the use, during his natural life, of one-half part of the lands his wife was seized of an estate of inheritance at any time during the marriage, although no issue born; all other laws of this State applicable to dower shall be applicable in like effect to estate by the curtesy. No action or suit shall be brought after ten years from death of a decedent, to recover or reduce to possession curtesy or dower by the surviving spouse of such decedent.

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

Deeds. Deeds must be sealed and executed in the presence of two witnesses, who subscribed their names to the same as such, and the execution acknowledged before an officer authorized to administer oaths. (See Acknowledgments.) If executed in any other state, territory, or district of the United States, or foreign country, shall be executed and acknowledged according to the laws of such state, territory, district or foreign country, or according to the laws of this State.

Unless recorded, a conveyance is void against a subsequent purchaser in good faith and for a valuable consideration whose conveyance is first recorded.

Conveyances, transfers, or liens executed by either husband or wife, to, or in favor of the other, are valid to the same extent as between other persons. A conveyance to husband and wife, jointly, creates an estate by entirety.

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. (L. O. L., Sec. 829.) 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. (L. O. L., Sec. 840.) 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. If deposition be taken outside of State, eight days' notice shall be given to adverse party of

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

time and place of examination, name of commissioner and the witness, if the distance of place of examination from place where testimony is to be used do (does) not exceed fifty miles, and one day in addition for every additional 25 miles. Either party may attend upon such examination, and examine the witness on oral interrogatories, but if either party by written notice to the other, within three days from the service of the original notice, require it, it shall be taken upon written interrogatories, to be settled, if not agreed upon, by the same officer and in the same manner as in case of a deposition upon commission; and in such case the deposition shall be taken, certified, and directed by the commissioner in same manner as a deposition upon commission. Laws 1917. (L. O. L., Sec. 841.) 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. The deposition 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. (L. O. L., Secs. 846-7-8.) 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.

Descent and Distribution of Property. Real property 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 the intestate living at the time of his or her death, such real property shall descend to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they shall take such real property equally or otherwise they shall take according to the right of representation. 2. If the intestate shall leave no lineal descendants, such real property shall descend to his wife, or if the intestate be a married woman, and leave no lineal descendants, then such real property shall descend to her husband; and if the intestate leave no wife or husband, then such real property shall descend in equal proportions to his or her father and mother. 3. If the intestate shall leave no lineal descendants, neither husband, nor wife, nor father, such real property shall descend to his or her mother; if the intestate shall leave no lineal descendants, neither husband, nor wife, nor mother, such real property shall descend to his or her father; if the intestate shall leave no lineal descendants, neither husband, nor wife, nor father, nor mother, such real property shall descend in equal shares to the brothers and sisters of the intestate, and to the issue of any deceased brother or sister by right or representation. 4. If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, mother, brotner, nor sister, such real property shall descend to his or her 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 a more remote ancestor. 5. When any child shall die under the age of twenty-one years and leave no husband nor wife nor children, any real estate which descended to such child shall descend to the heirs of the ancestor from whom such real property descended the same as if such child died before the death of such ancestor. 6. If the intestate shall leave no lineal descendants or kindred, such real property shall escheat to the State of Oregon. Personal property descends the same as realty, except that husband surviving takes half wife's personalty, the wife surviving takes half husband's personalty, and survivor takes all in the absence of issue.

Dower. The widow of every deceased is entitled to dower during her natural life of one-half part of all the lands whereof her husband was seized during marriage, unless she is lawfully barred thereof. Same right given to husband re curtesy. Where a husband purchases land during coverture, and mortgages the same to secure payment of the purchase money, his widow is not entitled to dower as against the mortgagee, although she shall not have united in the mortgage. A woman is not barred of her dower by reason of being an alien.

Equity of Redemption. (See Executions.)

Executions. The party in whose favor judgment is given may at any time thereafter within ten years, have execution issued to enforce payment. After ten years from the entry of judgment the lien thereof shall expire, provided the judgment is not renewed within the ten-year period, which may be done and repeated until satisfied. Execution may issue against the person or judgment debtor, against his property, or for the delivery of real or of personal property. The sale of property upon execution shall be made by auction. Property sold on execution, when subject to redemption, may be redeemed by the following persons: First—The mortgagor, or judgment debtor or his successors in interest. Second—A creditor having a lien by judgment decree or mortgage on any portion of the property. A lien creditor may redeem within sixty days after confirmation of sale by the court. A mortgagor or judgment debtor may redeem within one year after confirmation. (L. O. L. Secs. 245-6-7-8.)

Exemptions. Homestead exempted from judicial sale. Must be actual abode of, and owned by family, and not exceed 160 acres, or one block if in city, or $3,000. However said 160 acres or block must not exceed $3,000 in value. Personal property exempt includes books, pictures, and musical instruments to the value of $75; wearing apparel to the value of $100, and if a householder, to the value of $50 for each member of the family; tools, implements, apparatus, team, vehicle, harness, or library when necessary in the occupation or profession of a judgment debtor, to the amount of $400; also sufficient quantity of food to support such team, if any, for sixty days and fowl to the value of $50; if the judgment debtor be a householder, ten sheep, with one year's fleece, two cows, five swine, household goods, furniture and utensils to the value of $300; also food to keep them for three months, also six months' supply provisions for householder and family plus three cords wood or one ton of coal; the seat or pew occupied by a householder or his family in a place of public worship; all property of the State in any county, incorporated city, town, or village therein, or of any other public or municipal corporation. No article of property is exempt from execution issued upon a judgment for the purchase price. The judgment debtor must select and reserve such property as he claims as exempt at the time of levy. Earnings of judgment debtor for personal services for thirty days exempt up to $75 when necessary for the family supported wholly or in part by judgment debtor, except when the debt is incurred for family expenses, 50 per cent of such earnings shall be subject to attachment, garnishment, or execution.

Foreign Corporations. (See Corporations.)

Foreign Judgments may be basis of action, but must be pleaded and proved.

Frauds. Every conveyance or assignment in writing or otherwise of any estate or interest in lands or personal property, and every charge upon lands, goods, things in action, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons shall be void. Every grant or assignment of every existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent, lawfully authorized, shall be void. The question of fraudulent intent shall be deemed a question of fact and not of law.
Statute of Frauds. (See Contracts.)

Garnishment. Attachment of execution may be levied upon personal property of the defendant in the hands of third persons, or on debts due defendant, by leaving a certified copy of the writ and also notice of garnishment with the debtor, and such debtor or third person shall furnish the sheriff a certificate, showing property in his possession belonging to defendant. If the certificate is unsatisfactory, the garnishee may be examined under oath.

Holidays. (See Holiday Map, opposite P. 13.) When day of maturity of negotiable instrument 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 next succeeding business day, except that instruments payable on demand may at the option of the holder, be presented for payment before twelve o'clock, noon, on Saturday, when that entire day is not a holiday. Whenever any legal holiday other than Sunday falls upon Sunday, the Monday following shall be observed as such holiday.

Designated holidays: Every Sunday, January 1, February 12, called Lincoln's Birthday, February 22, called Washington's Birthday, May 30, July 4, first Monday in September, called Labor Day, October 12, called Columbus Day, December 25, and election days and any day set apart by the President or the Governor. No judicial business can be transacted on any of foregoing days except for certain purposes. Laws 1915 and 1917.

Husband and Wife. (See Married Women.)

Injunction allowed as a provisional remedy, upon giving bond in cases where right thereto is shown.

Interest. Legal rate, 6 per cent; contracts may be made in writing for 10 per cent. Usury works forfeiture of principal and interest; but judgment will be rendered against defendant for the principal of the debt to be paid into the common school fund of the county in which suit was commenced and against the plaintiff for costs. Laws of 1915 provide for special license to those engaged in loaning money in excess of 10 per cent.

Judgments are a lien from the date of docketing on all defendant's real property within the county or counties where same is docketed, and on all which he may subsequently acquire during the life of the judgment. If ten years are allowed to elapse without issuance of execution on the judgment the lien ceases, provided that before the expiration of the ten years, the circuit court may upon motion extend the time another ten years, and then another, etc.

Jurisdiction. (See Courts.)

Liens. Person furnishing material or performing labor in building or repairing any structure or superstructure has a lien on the same and sufficient land for its enjoyment.

Hotel and boarding house keepers have a lien on guests' baggage.

Common carriers and warehousemen have a lien for charges.

Various statutes provide for laborers' liens in certain cases.

Limitations of Suits. On contracts not under seal, express or implied, six years; on judgments or decrees of any court and sealed instruments, ten years; recovery real property, ten years. Revivor: Part payment or new promise in writing.

Married Women retain their real and personal estate owned by them at time of marriage or afterwards acquired, free from the debts and control of their husbands. A married woman may make contracts in her own name, buy goods, and give notes in settlement, and her real and personal property may be sold to satisfy the same. She may dispose of her real estate by will, subject to any rights which her husband may have as tenant by the curtesy. Wife may manage, sell, convey or devise by will to same extent and in same manner as her husband can. She is entitled to receive and hold the wages of her personal labor, and sue therefor in her own name, and she can prosecute and defend all actions for the preservation or protection of her property and rights as if unmarried. The expenses of the family and education of the children are chargeable upon the property of both husband and wife or either of them, and in relation thereto they may be sued jointly or separately. All laws imposing or recognizing civil disabilities upon the wife not imposed or recognized upon the husband have been repealed. The wife's dower and the husband's curtesy in real property are preserved.

Mines and Mining. Any person being a citizen of the United States, or having declared his intention to become such, discovering a vein or lode of mineral bearing rock, may locate claim by posting notice, and thirty days thereafter marking the boundaries with six substantial posts, and making the improvements provided by statute within sixty days after the posting of notices, and within said sixty days, and after the required improvements have been made, file for record with the recorder of conveyances copy of such notices. All mining claims in this State are deemed real estate, and subject to all the provisions as to transfer, mortgage, etc., except that redemption from execution sale must be made within sixty days. Abandoned claims may be taken up under the provision of the act without reference to any work previously done thereon. Ditches and mining flumes permanently affixed to the soil are considered real estate, provided that non-user for five years or removal from the State will forfeit all title or interest. Grub stake contracts must be in writing and recorded in the county where locations thereunder are made. Any person may hold one claim by location and as many by purchase as the laws of the district where the claims are located will allow, but the discoverer of any new lead or vein not previously located upon may take one additional claim for discovery.

Mortgages of real or personal property and assignments thereof are executed and recorded in the same manner as deeds, and foreclosed by suit in equity. A satisfaction of a mortgage by the person appearing on the record as the owner thereof releases the land from the lien of said mortgage. 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 unless recorded. Every transfer of an interest in real property, no matter what its form, is deemed a mortgage if made as security. A mortgage does not entitle a mortgagee to possession of the property or bind the mortgagor personally to perform the act for the performance of which it is security, unless there is an express covenant to that effect. Mortgage upon real estate shall not be a lien or incumbrance after ten years from its execution or if otherwise disclosed ten years from date of maturity of the principal indebtedness.

Notaries. Appointed by governor for four 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 by the judgment debtor or his successor in interest by paying purchase money, interest at 10 per cent per annum, and taxes paid by purchaser. A lien creditor may redeem from sale within sixty days from date of order of confirmation. (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 and undertaking as required by statute.

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Surety Companies. Foreign surety companies with a paid-up capital of $250,000 and having assets of $300,000, or domestic companies with a paid-up capital of $100,000, may be accepted as sole sureties on all bonds, undertakings, recognizances, and obligations required or permitted by law. The foreign corporations must appoint a resident agent to do business for the company and upon whom legal service may be made. A tax of 2 per cent is payable upon net premiums and may be collected by distraint. The secretary of state issues a certificate and the insurance commissioner grants a license allowing such company to do business from year to year.

Taxes. Taxes on real property are delinquent after fifth day of October, except when one-half is paid on or before fifth day in April; balance may be paid on or before fifth day of October. Owner may redeem at any time before tax deed is issued by paying the tax collector, for benefit of holder of certificate of delinquency, the amount paid for certificate, cost and interest thereon at 15 per cent. Delinquent taxes subject to penalty of 5 per cent on November 5th following, in addition to interest.

Personal property may be sold for taxes, or taxes due on personal property may be made a lien on real property.

Transfer of Corporation Stock must be on the books of the corporation.

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, subject to rights of dower and curtesy or the election of widow or husband in lieu thereof. Laws 1917. 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 legacy or devise to an attesting witness is void and such person shall be admitted as a witness to the execution of such will.

SYNOPSIS OF

THE LAWS OF PENNSYLVANIA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by MORRIS, WALKER AND BOYLE, Attorneys at Law, 1608 Commonwealth Bldg., Pittsburgh.
(See Card in Attorneys' List.)

Acknowledgments of deeds of land in Pennsylvania should be made in the United States before an 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.

A married woman may make acknowledgment in the same manner and form as a femme sole.

Actions. Torts are sued in trespass; all other claims in assumpsit common pleas courts have equity powers. Assumpsit to $300, cognizable by justices of the peace. Common pleas has original jurisdiction in all civil actions. By Act of 1911, and supplements, a county court was established for Allegheny county, having jurisdiction in assumpsit and trespass to $1,500; also has jurisdiction in desertion and non-support, and in juvenile court cases. Hears appeals from justices and aldermen. Appeal lies to Common Pleas court.

The municipal court of Philadelphia County, created by Act of 1911, and supplements, is very similar to the Allegheny county court.

Administration of Estates. Administrators must file an inventory and appraisement of the personal estate within thirty days, and settle an account after six months from the date of their appointment. A widow is entitled to retain real or personal property to the amount of $500. 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.

Appeals may be taken within six months to the superior or supreme court, according to the nature of the question or amount involved; but such appeal does not supersede an execution issued or distribution ordered, unless taken and perfected, and bail entered within three weeks from such entry. An appeal may be taken to the county court from a judgment before a justice of the peace at any time within twenty days from date of judgment. A corporation appellant must in all cases of appeal from justice's judgment give bond for debt, interest and costs. (See Courts.)

Arrest in civil cases, under capias, issued instead of summons to begin an action, may occur in certain cases of assumpsit and in tort actions 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. 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. Insolvency Act of 1901 is similar to the United States bankruptcy law and has been decided to be suspended while the United States bankruptcy 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. Attachment can also be had to seize and hold property of non-resident. Judgment pursuant to foreign attachment binds the attached property only, unless the defendant appears.

Banks. Any 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 and advertised 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. 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, and in case of insolvency are liable for assessment to the par value of their stock. 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. Under act of 1907, private banks are subject to supervision of state commissioner of banking. Under act of 1907, state banks and trust companies must maintain reserve of 15 per cent of checking accounts and 7½ per cent on savings accounts and time deposits.

The Banking Act of 1923 provides elaborately for the organization, maintenance and operation of the Department of Banking, and the scope of its supervision.

Trust companies are organized under the general corporation law for the purpose of insuring titles capital in any amount, and acquire trust company powers by accepting certain laws and paying up $125,000 capital, at least. No double liability.

Bills of Lading. A bill of lading 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. Allowed in iron, steel, and certain other articles. Must be recorded.

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 and 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.

Conditional Sales. The Uniform conditional Sales Act was passed in 1925, requiring recording of such agreements in order to be valid against creditors of the vendee.

Corporations. A corporation may be formed for any single lawful purpose. Two or more corporations for the same or different purposes may be consolidated. Corporations for profit are chartered by the governor; others by the court of common pleas of the proper county. The former pay a charter bonus of one-third of 1 per cent on the authorized capital; annual tax 5 mills on appraised value of capital stock. Foreign corporations are subject to the same bonus and the same tax on the capital employed in this State. Foreign corporations doing business here must register and comply carefully with the State law under severe penalties and risk of avoidance of contracts. Manufacturing corporations are exempt from taxation, if capital is invested in strictly manufacturing pursuits.

Days of Grace are abolished.

Deeds and Mortgages. Deeds and mortgages should be under seal and duly acknowledged. Scroll seal is sufficient. Acknowledgments taken out of the State are usually taken before a notary, whose authority should be evidenced by certificate of clerk of court. Husband must join in wife's deed or mortgage. Wife must join in husband's deed, not in his mortgage. The wife need not acknowledge separate and apart from husband. By statute, the words "grant and convey" import all usual covenants except warranty. Covenants of warranty are added by the words "will warrant generally the property hereby conveyed," or, "will warrant specially the property hereby conveyed," as the case may be. Essential words of quitclaim deeds are "release and quitclaim." (For forms see Act 1909, page 91.) A mortgage is in form a conveyance, usually reciting a bond which it secures, and containing a clause of defeasance.

By Act of 1925, P. L. 613, all deeds, conveyances, contracts and other instruments of writing for sale of lands in the State must be recorded in order to be effective against subsequent bona-fide purchasers or mortgagees without notice, thus in effect making necessary immediate recording of such deeds, etc.

Descent and Distribution of Property. Estates of intestates are to be distributed as follows: 1. Where an intestate shall leave a spouse surviving and one child only, or shall leave a spouse surviving and no children but shall leave descendants of one deceased child, the spouse shall be entitled to one-half part of the real and personal estate. 2. Where an intestate shall leave a spouse surviving and more than one child, or one child and the descendants of a deceased child or children, or the descendants of more than one deceased child, the surviving spouse shall be entitled to one-third part of the real and personal estate. 3. Where an intestate shall leave a spouse surviving and other kindred, but no issue, the surviving spouse shall be entitled to the real or personal estate or both, to the aggregate value of $5,000, in addition in case of a widow, to the widow's exemption as allowed by law (now $500); and if such estate shall exceed in value the sum of $5,000 the surviving spouse shall be entitled to the sum of $5,000 absolutely to be chosen by him or her from real or personal estate or both, and in addition thereto, shall be entitled to one-half part of the remaining real and personal estate. 4. Where a husband, for one year or upwards previous to the death of his wife, wilfully neglected or refused to provide for his wife, or where for that period or upwards he wilfully and maliciously deserted her, he shall have no right or interest in her real or personal estate under the provisions of the intestate act. Where a wife, for one year or upwards previous to the death of her husband, wilfully and maliciously deserts her husband, she shall have no interest in his real or personal estate after his decease under the intestate law. 5. The real and personal estate of an intestate not hereinbefore given to the surviving spouse, if any there be, shall descend to and be distributed among his or her issue according to the following rules and order of succession, namely: (a) If such intestate shall leave children but no other descendant, being the issue of a deceased child, the estate shall descend to and be distributed among such children. (b) If such intestate shall leave grandchildren but no child or other descendant, being the issue of a deceased grandchild, the estate shall descend to and be distributed among such grandchildren. (c) If such intestate shall leave descendants in other degrees of consanguinity, however remote from him, and be in the same degree of consanguinity to him, the estate shall descend to and be distributed among such descendants. (d) If such intestate shall leave descendants in different degrees of consanguinity to him, the more remote of them being the issue of a deceased child, grandchild or other descendant, the estate shall descend to and be distributed among them as follows, namely: (1) Each of the children of such intestate shall receive such share as such child would have received

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

if all the children of the intestate who shall then be dead, leaving issue, had been living at the death of such intestate. (2) Each of the grandchildren, if there shall be no children, in like manner shall receive such share as he or she would have received if all the other grandchildren who shall then be dead, leaving issue, had been living at the death of the intestate, and shall in like manner to the remotest degree. (3) In every such case the issue of such deceased child, grandchild or other descendant shall take, by representation of their parents respectively such shares only as would have descended to such parents if they had been living at the death of the intestate. (6) In default of issue as aforesaid the real and personal estate of such intestate not hereinbefore given to the surviving spouse, if any there be, shall go to and be vested in the father and mother of such intestate, or if either the father or mother be dead at the time of the death of the intestate the parent surviving shall take such real and personal estate. (7) In default of issue, father and mother, the real and personal estate of such intestate not hereinbefore given to the surviving spouse, if any there be, shall descend to and be distributed among the collateral heirs and kindred of such intestate, without distinction between those of the whole and those of the half blood according to the manner enumerated in the Act of 1917. (8) A person adopted shall, for all purposes of inheritance and taking by devolution, be a member of the family of the adopting parent or parents. Every illegitimate child shall be considered as a brother or sister to every other child of its mother, legitimate or illegitimate.

Dower. (See Descent.)

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 on 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. Typewriting machines, pianos, organs and soda fountains, leased or hired, are exempt from sale on execution or distress for rent, provided notice of such leasing has been given to the landlord.

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. Wages exempt except for board.

Holidays. January 1st, February 12th, February 22d, Good Friday, May 30th, known as Memorial Day, July 4th, the first Monday of September, known as Labor Day, October 12th, Columbus Day, the first Tuesday after the first Monday of November (election day), November 11th, Armistice Day, Thanksgiving Day, Christmas, and every Saturday after twelve o'clock noon until twelve o'clock midnight are designated as legal holidays, and in respect to negotiable paper are to be treated and considered as such.

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. 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.

Judgments of record bind all the interest of defendant in real estate within the county where the judgment was entered. The lien is against only real estate then owned in the county by the defendant. After-acquired real estate is not affected by the verdict or judgment, but a lien may be acquired on such after-acquired real estate by revival of the judgment as against it; and in the interim, by execution issued against such after-acquired real estate, and indexed in the judgment dockets. Lien exists for five years, and may be continued by revival of the judgment. 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 death, one year; 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 have all the legal rights and capacity of an unmarried person except that they cannot convey or mortgage real estate without joinder of husband, and cannot become accommodation makers, endorsers or sureties, or guarantors. (See Deeds.)

Act of 1925, P. L. 649, provides for sale of property held by husband and wife as tenants by entireties where they have been divorced.

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 inheres from time of recording except where given for purchase money, when the mortgage is a lien from its date, if recorded within thirty days. By Act of 1915. (See Deeds.)

Notes and Bills of Exchange. The substantive law is codified in the Negotiable Instruments Law of 1901.

Supplementary Proceedings. Where the Sheriff makes a return that property of debtor cannot be found sufficient to satisfy an execution, the plaintiff may by application to the Court compel the debtor to submit to an oral examination for the purpose of discovering whether he has property which may be made subject to execution on the judgment.

Taxes. Improved or occupied "seated" lands are liable to sale for non-payment of taxes for two years, if sufficient personal property cannot be found, but the owner has a right to redeem within the same time and in the same manner as if the real estate were unseated. By act of June 2, 1881, taxes are made a first lien upon real estate, except in cities of the first, second, and fourth class, and by act of April 30, 1885, cities of the third, fourth and fifth classes may enact ordinances making taxes upon real estate a lien, which shall be prior to and paid before any recognizance mortgage, judgment debt, obligation, or responsibility. "Unseated" lands may be sold after taxes thereon have remained due and unpaid for one year, and the owner may redeem at any time within two years from the time of sale by the payment of the taxes and costs, with the additional sum of twenty-five per cent on the same and subsequent taxes which may have been paid by the purchaser to the county treasurer. If the sale is alleged to be invalid because the taxes were paid previously to the sale, or from other cause, an action must be brought for the recovery of the lands within five years from the delivery of the deed to the purchaser, or the right of the owner is barred. Minors may redeem within two years after coming of age. In the city of Philadelphia land may be sold for the non-payment of taxes and municipal claims and assessments, but the owner may redeem at any time within two years from the date of the acknowledgment of the sheriff's deed, by payment of all costs and charges and twenty per cent upon the amount for which the property was sold. There is no redemption of lands sold on execution, except for taxes and municipal claims. Delinquent taxes in Philadelphia may be collected by a levy and sale of the delinquent owner's personal property wherever found. Personal property of a tenant on the premises may also be levied on, and as much of the tax collected by a sale of the same as there is rent due. If the taxes exceed the rent in arrear, the levy remains, and the accruing rents are collected and applied to payment thereof. Payments which tenants are thus compelled to make are lawful deductions from the rent. The real estate upon which the taxes are due may also be sold. The owner may redeem within two years from the acknowledgment of the deed to the purchaser, upon paying the amount bidden at the sale, with ten per cent thereon and costs added. (Act of April 19, 1883.) In Philadelphia, taxes are payable in advance on the first day of January. There is a discount till July 1. After September 1st a penalty is added which increases in amount at later periods of the year. Taxes become delinquent after December 31st of the current year. In other parts of the State different regulations prevail. By the act of April 19, 1889, owners of real estate or taxable property may appeal from the decision of the county commissioners or board of revision and appeal to the Court of Common Pleas, but such appeal will not prevent collections subject to the right to a return.

Act of 1911, P. L. 295, provides for the levy and collection of taxes and water rents or rate.

In Pittsburgh all taxes and water rents levied for city and water purposes shall be payable in advance during the months of March, April and May of each year, except water rents for water supplied to consumers through a meter. A discount of 2 per cent shall be allowed on all taxes and water rents or rates paid during the month of March; during the months of April and May, all taxes and water rents or rates shall be payable at face. If said taxes and rents shall not be paid at the times fixed they shall be deemed delinquent; penalty for nonpayment as above 3 per centum. Act of May 31, 1913, amends Act of 1911, P. L. 295.

Warehouse Receipts. Receipts complying in substance with act of 1909 are negotiable if stating that the goods will be delivered to bearer or to order of a named person.

Wills. 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 away 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. 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. A devise or bequest in trust for any religious or charitable use, made within 30 days prior to testator's death is void.

SYNOPSIS AND NOTES AS TO DIGEST OF THE

LAWS OF PHILIPPINE ISLANDS

Prepared by Jos. N. and J. A. Wolfson, Attorneys at Law, Pacific Bldg., Manila.

(See Card in Attorneys' List.)

Judgments carry interest at rate of 6 per cent, unless higher rate agreed, but not higher than usury law.

Our Municipal Court in the city of Manila and our justices of the peace in the provinces have jurisdiction from one cent to $300, United States currency. For $300 (United States currency) or over suit must be filed in our court of first instance, which court has concurrent jurisdiction with the justice of the peace from $100, United States currency, to $300, United States currency. Appeals can be taken to the supreme court of the Philippine Islands for any amount. Special laws relating to land.

The cost of filing in the justice court, inclusive of sheriff's fees, is about $3.00, United States currency, in courts of first instance $8.00 plus sheriff's fee, which depend upon distance that service must be made. The cost for filing a suit in the supreme court is $12, United States currency. If facts are to be reviewed, all pleadings must be printed. Cost $1.00 per page. 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 and the judgment and the appeal. The evidence and testimony goes to the supreme court from the court of first instance in its original form as filed below. Briefs, of course, are paid for by the respective parties and cannot be recovered as costs. There are statutory fees allowed the winning party.

Attachments are allowed on statutory grounds (a) intent to depart and defraud creditors; (b) money embezzled; (c) concealment or removal of property with intent to defraud; (d) against a non-resident.

A chattel motgage law has been enacted enabling a person to secure loans on personal property, except on general stock of merchandise in a going store.

There is a liberal corporation law, except that land holdings are limited, and no corporation returns—other than public utilities and insurance companies—need be filed. Five incorporators are necessary and the secretary must be a resident of the Philippines and a citizen of the United States or of the Philippines.

The divorce law grants absolute dissolution of marriage only when offending spouse has been criminally convicted of adultery in the case of wife, or concubinage in case of husband, and only upon petition of innocent spouse.

Garnishment of a debtor is allowed, as well as supplemental proceedings.

Our supreme court has decided that the judgment having oldest date takes first privilege over proceeds regardless of first execution, no matter how vigilant the subsequent judgment creditor.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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 pacto 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. The uniform "Negotiable Instruments Law" is now in force here, also the uniform "Warehouse Receipts Law."

A claim sent for collection may be proved 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 1 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 sheriffs 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.

A bankruptcy law, practically the same as the national bankruptcy bill of the United States was passed at the 1909 session of our legislature. A merchant may be put into bankruptcy upon the petition of three or more local creditors whose claims have remained unpaid for thirty days, provided their claims aggregate $500 United States currency or more, and accrued in the Philippines. There are of course other grounds for bankruptcy.

We have the "Torrens Title" system of registering title to lands. This system has been in force since 1902 and has worked splendidly. Cadastral surveys are now being made in many parts of the islands.

Our mining laws are set forth in the Act of Congress of July 1, 1902. A few amendments have been made. Patents to mining claims are easily obtained but are quite expensive

SYNOPSIS OF

THE LAWS OF RHODE ISLAND

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by EARLE B. ARNOLD, Attorney at Law, 504 Industrial Trust Building, Providence.

(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 limits of 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 commission 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 court having jurisdiction in the district 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. If these neglect within thirty days to apply, any person interested in the estate may petition for the appointment of some suitable person. Non-residents are not appointed by reason of any right to such trust but may be appointed in discretion of the court. Foreign executors and administrators must appoint local agent for acceptance of service of process. Bonds shall be given in such amounts and with such sureties as the court shall direct. Executors and administrators shall file accounts within two years after qualification and thereafter annually. The probate court may allow widow or minor children such household effects and property exempt from attachment as it deems necessary and shall also make reasonable allowance for the support of the family not exceeding six months from the date of decease. Notice of practically all proceedings is given by publication. Where personal property is insufficient to pay debts, the funeral expenses, charges of administration and expense of support of family, real estate may be sold or mortgaged by the executor, administrator or guardian upon application to the probate court and upon terms and conditions imposed by the court and under certain limitations as prescribed by statute.

Affidavits may be taken by any magistrate within the State and before any commissioner appointed bythe 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 decree or order of a probate court or town council to the superior court within forty days after the decree or order. If no appeal is taken by reason of accident, mistake or unforeseen cause, a right to appeal may be granted by the supreme court upon petition filed within one year. In all cases where an executor, administrator or guardian is directed by law to obtain the advice and direction of the probate court before acting, there is no appeal from such advice or direction; and the same is conclusive, and all parties acting thereon are protected thereunder. Appeals from a district court to the superior court may be taken 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 court. There are especial statutory provisions regarding proceedings upon arbitration.

Arrest. Writ of arrest may issue in contract suits, where defendant has committed fraud in fact, or is about to leave the State, and in all tort actions.

Assignments. Every person making an assignment at common law for the benfit of creditors shall file with his assignee a sworn, itemized schedule of all his assets, showing the amount and kind of his property, wnere 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 lies in assumpsit. Writs may issue to attach real or personal estate of a debtor when the plaintiff, his agent or attorney shall make affidavit, to be endorsed on the writ or annexed thereto, that the plaintiff has a just claim against the defendant that is due, on which he expects to recover a sum sufficient to give jurisdiction to the court to whith the writ is returnable.

The property of a non-resident defendant may be attached in tort actions upon like affidavit stating also the fact of his non-residence.

Banks and Trust Companies. The bank commissioner, the general treasurer, and the attorney-general constitute the board of bank incorporation. Fifteen or more persons, citizens and residents of this State, may associate themselves by agreement in writing for the purpose of forming either a bank, a savings bank, or a trust company, and become a corporation, with all the powers, rights, and privileges, and subject to all the duties, restrictions, and liabilities set forth in title XXV of the General Laws of Rhode Island, 1923, and amendments and additions thereto. The bank commissioner shall at least twice in each year visit and examine each bank, savings bank, or trust company incorporated in this State, and he shall annually report to the general assembly the condition of all institutions examined by him, with such recommendations as he may deem proper. Every bank and trust company, whenever required by the bank commissioner, but at least five times within any calendar year, shall make a full and detailed report to the bank commissioner, over the signatures and oaths of its president or vice-president and secretary or treasurer, or cashier, or auditor, and attested by at least three of its board of directors, showing accurately the condition of such corporation at the close of business on any past day by him specified; and every savings bank, upon request of the bank commissioner, but at least twice within any calendar year, shall make a report to said bank commissioner, signed and sworn to by its president or treasurer, showing accurately the condition of such corporation at the close of business on any past day by him specified. In case any such corporation appears to be insolvent, the bank commissioner, with the approval and consent in writing of at least one other member of the board of bank incorporation, shall immediately take possession of said corporation and its assets, and may apply to the superior court for the appointment of himself or a deputy or both, as receiver or receivers thereof. Investments by and reserve funds of such corporations are prescribed and limited by the provisions of said title, and amendments thereto.

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

Bills of Lading. Every bill of lading must embody within its written or printed terms, the date of its issue, the name of the person from whom the goods have been received, the place where the goods have been received, the place to which the goods are to be transported, a statement whether the goods received will be delivered to a specified person, or to the order of a specified person, description of the goods or of the packages containing them, which may, however, be in such general terms as are referred to in section 23, and the signature of the carrier. (The Uniform Bills of Lading Act went into effect in April, 1914.)

Blue Sky Law So-Called. Brokers or salesmen of securities must register with Bank Commissioner. Applicant must furnish names of three citizens who can vouch for his character. Brokers must pay an annual fee of twenty-five ($25.00) dollars. Salesmen must pay an annual fee of two dollars ($2.00). Except in case of certain securities which are exempted, notice of intention to sell must be sent by registered mail to commissioner. Brokers must place name and address on all literature or advertisements. Must not state that provisions of act have been complied with. Applicant must file permanent mail address. Commissioner has wide powers of inquiry and investigation and severe penalties are provided for non-compliance with the provisions of the act.

Chattel Mortgages are executed in the same manner as mortgages of real estate, and may cover any kind of personal property.

To be valid against third parties, they must be recorded where the mortgagor resides, if he be a resident of the State; if a non-resident the record must be in the town where the property is at the time of making the mortgage. Or the mortgagee may take possession of the mortgaged property and will be protected as a pledgee in possession against third parties. But, the mortgage must be recorded or possession must be taken within five days or the date of signing, otherwise it is void except as to the parties and those having actual notice of it.

Foreclosure is usually effected by sale under power in the mortgage. Mortgagor may redeem at any time within sixty days after condition is 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 filed in the office of the probate clerk, within six months from the date of the first advertisement of the notice of the qualifications of the executor or administrator, 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 unforseen cause, which claims shall be paid if the administrator still has funds in his hands. Creditors failing to file claim in time may petition probate court for leave to file claim; claims filed within six months from first publication are preferred. Claims filed within six months may be disallowed in thirty days after expiration of six months from first publication of notice; claims filed within one year in thirty days after the year; and claims filed after the year in thirty days after filing. Interested parties may secure authority from the probate court to disallow after the term as above specified has expired. Suits on disallowed claims may be brought in six months after notice has been given of disallowance unless the estate is insolvent or commissioners are appointed. Debts due to the United States, the necessary furneral 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, wages, debts filed within six months, all other debts, 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. There is no statutory provision as to the method of foreclosure of collateral.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Contracts. All contracts, except for necessaries, made by any person under guardianship shall be void. Assignments of wages to be earned in the future will be void unless recorded in the form prescribed by statute. Contracts for the sale of lands, or the lease thereof for more than one year; contracts made upon consideration of marriage; contracts not to be performed within one year from the making thereof; and contracts to sell or a sale of goods or choses in action of $500 or more, unless the buyer shall accept part of the goods or choses in action and actually receive the same, or gives something in earnest to bind the contract, or in part payment, must be in writing and signed by the party to be charged or his lawfully authorized agent.

Conveyances. (See Deeds.)

Corporations. Under the provisions of Chapter 1925, Public Laws, 1920, (a new corporation act having gone into effect on July 1, 1920), any three or more persons of lawful age may associate for the purpose of organizing any ordinary business corporation, and upon filing articles of association with the secretary of state and payment of incorporation fee, secure perpetual charter unless the duration of the corporation is limited in the articles of association. (Corporations which shall need to exercise right of eminent domain, insurance companies, banks and corporations to trade in bonds, stocks, etc., are otherwise organized.) Organization fee of 50 cents for each $1,000 of authorized capital, and in case of stock having no par value, 5 cents a share; but with a minimum fee af $25.00. Corporation must have place of business within the state, and treasurer, if a resident, must file name and address with the secretary of state. If treasurer is a non-resident there must be some competent person appointed resident attorney to accept service of process. Records of transfers of stock shall be kept within the State. Meetings of stockholders must be held within the state, but directors' meetings may be held either within or without the state. There is only a restricted stockholders' liability. There are special provisions for literary, scientific and miscellaneous corporations.

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 supreme court has general supervision of all inferior courts and has jurisdiction of petitions for new trials, bills of exceptions and appeals. Its principal session is held at Providence from the first Monday in October to the second Monday in July in the following year. The superior court has original jurisdiction of suits in equity, petitions for divorce, all actions at law where the debt or damages laid in the writ shall exceed $500, of probate appealed cases and claims for jury trials from district courts. District courts have jurisdiction in civil cases limited to $500 of cases involving tenements let and are in session throughout the year. Each town and city has its own provate court . The superior court is in continuous session from the third Monday in September to the second Monday in July the following year.

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 landevidence in the town or city where the said lands, tenements or hereditaments are situated: Provided, however, that the same, if delivered, as between the parties 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.) A lease for one year or less is valid by parole.

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. Dower and curtesy exist. The following provisions went into effect June 1, 1919. Where intestate dies, without issue, surviving husband or widow takes life estate in all realty. Probate court may, upon petition filed within one year after decease, set off to widow or husband in fee real estate not exceeding five thousand dollars in value, over and above encumbrances, if not required for the payment of debts. Subject to above provision real estate descends in the following course: 1. To children or their descendants. 2. To the parents in equal shares or to the surviving parent. 3. To the brothers and sisters and their descendants. In default of these, in equal moieties to the paternal and maternal kindred, each in the following course: 1. To the grandparents, in equal shares. 2. To the uncles and aunts, or their descendants by representation. 3. To the greatgrandparents, in equal shares. 4. To the great-uncles and great-aunts, or their descendants by representation, and so on, in other cases, without end, passing to the nearest lineal ancestors and other descendants. But 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." Surplus of personal estate, after payment of debts and charges, not bequeathed, is distributed as follows: 1. $3,000 and one-half of the remainder to husband or wife, if there be no issue. 2. One-half to husband or wife, if there be issue. 3. The remainder is distributed in the manner provided for the descent of real estate, but without regard to the blood of the person from whom such personal estate, came or descended.

Dower. (See Descent and Distribution.)

Employers' Liability. A Workmen's Compensation Act providing for payments to employees for personal injuries received in the course of their employment applies to employees except in domestic service, agriculture and any other lines, where five or less workmen or operatives are regularly employed. Employers to whom the act applies may elect whether or not to accept its provisions, but those who do not are deprived by the act of the defenses of assumption of risk, contributory negligence and negligence of a fellow servant in actions brought against them by their employees. Employees electing to become subject to provision of said act are held to have waived rights of action at common law unless notice in writing is given to employers, claiming such rights within a specified time. For injuries resulting in death of employees or in incapacity for labor for a period of more than one week, certain fixed amounts must be paid by employers to those dependent upon the employees or to the employees themselves for specified periods of time, the same to be full compensation for said injuries.

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, in prosecutions for offenses against chastity, morality, decency, and in trial between them involving their respective property rights. 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 in certain other cases.

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.

False Statements to Obtain Property on Credit. The making of a false statement in writing of financial condition for the purpose of procuring the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of credit and the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note, is a misdemeanor.

Foreign Corporations. Every foreign corporation, other than national banking associations and foreign insurance companies, shall file in the office of the secretary of state a copy of its charter and all amendments thereto, certified under the seal of the state or country in which such corporation is incorporated by the secretary of state thereof; also a certificate signed and sworn to by certain of its officers setting forth the name and place of business in this state of the corporation, the character of its business, amount and classes of its capital stock issued and outstanding, names and addresses of directors and officers and dates when respective terms of office expire, and date of annual meeting, and a written power appointing some competent person resident in this state as its attorney to accept service of process. As a condition precedent to carrying on business, must pay a fee of $25.00. All foreign corporations must file an annual report with the secretary of state in the month of February of each year.

Foreign Judgments. There is no statutory provision as to foreign judgments.

Garnishment. Personal estate of the defendant in the hands of any person, co-partnership, 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. The first day of January, the 22d day of February, second Friday in May as Arbor Day, the 30th day of May as Memorial Day, July Fourth, first Monday in September as Labor Day, the 12th day of October as Columbus Day, December twenty-fifth, the Tuesday next after the first Monday in November in each year when a general election of state officers is held, November 11 as Armistice Day, Sundays, and such other days as the governor, or general assembly, or the president, or the Congress of the United States shall appoint as Holidays. Holidays other than Sunday, falling on Sunday, are observed on the Monday following.

Insolvency. Any inhabitant of this State owing debts in this State to the amount of $300 or more, and who shall be insolvent, may prefer his voluntary petition under oath for relief as an insolvent; and such person shall be adjudged insolvent if he has within four months prior to the filing of a petition in insolvency against him, procured or suffered to remain for forty days, any attachment of or levy upon his property, with intent to give or suffer a preference, or, being insolvent, has suffered judgment to be entered against him in this State or elsewhere, or has made a conveyance, gift or transfer with intent to hinder, delay or defraud his creditors; or has made an assignment for the benefit of his creditors, or has secreted his property, with intent to hinder, defraud or delay his creditors, or has, within four months next prior to the filing of a petition against him, knowingly in writing made a false statement involving his financial condition, property, or ability to pay, or has done or omitted other things prescribed by Chapter 339 of the general laws, 1909. Proofs of claim shall be made in writing under oath by the creditor or his agent, and filed with the clerk of the superior court, unless the matter has been sent to a register, in which event they shall be filed with the register. (See also title 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.

Whenever by the laws of any other state of the United States any fees, charges, taxes, deposits of money or of securities or other obligations or prohibitions are imposed on insurance companies incorporated or organized under the laws of this State or on the agents of such insurance companies, so long as such laws continue in force, the like fees, charges, taxes, deposits and obligations shall be imposed on the like insurance companies doing business in this State which are incorporated or organized under the laws of such other State and on their agents. (P. L. 1914, Chap. 1063.)

Interest. No person, partnership, or corporation, except duly licensed pawnbrokers, shall charge or take interest on any loan, whether before or after maturity, at such a rate, including compensation for services or expenses incidental to the making, negotiation or collection of such loans, that total of one year's interest shall exceed thirty per centum of the amount actually received by the borrower, on all amounts exceeding fifty dollars, whether in one or more loans, and on all amounts not exceeding fifty dollars, five per centum per month for the first six months; and thereafter two and one-half per centum per month of the amount actually received by the borrower.

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. Insurance agents must procure license from the insurance commission.

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

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

which same is situated, by contract with such owner, or with the husband of such owner with the consent of his wife in writing, has a lien thereon for such work and materials, subject to the encumbrances on land at time of the commencement of work or delivery of the materials. A sub-contractor has such lien, provided he gives written notice to the owner of the property affected thereby within forty days after doing such work, and sixty days after materials are placed upon the land, that he will claim such lien. Spinners, bleachers, manufacturers, throwsters, etc., are entitled to a lien for work or labor performed or materials furnished. This lien is not waived, suspended or impaired by the recovery of any judgment or the taking of any bill or note for money due. After advertisement, the lienor may sell the goods or enforce the lien by any other lawful procedure.

Limitations of Actions. Actions for words spoken shall be commenced and sued within one year, next after the words spoken. Actions for injuries to the person shall be commenced and sued within two years next after the cause of action shall accrue. Actions of trespass, except for injuries to the person, shall be commenced and sued within four years next after the cause of action shall accrue. All actions of account, except on such accounts as concern trade or merchandise between merchant and merchant, their factors and servants, all actions of the case except for words spoken and for injuries to the person, all actions of debt founded upon any contract without specialty or brought for arrearages of rents, and all actions of detinue and replevin, shall be commenced and sued within six years next after the cause of action shall accrue. All actions of debt other than those in the preceding sections specified, and all actions of covenant, shall be commenced and sued within twenty years next after the cause of action shall accrue. No executor or administrator may (except in certain cases, for which special provision is made by statute) be sued at law or in equity, by a creditor of the deceased, within six months from the date of the first publication of the notice of the qualification of the first executor or administrator. No executor or administrator shall be held to answer to the suit of a creditor of the deceased, except to a suit on his bond or as is otherwise provided, unless such suit is commenced within two years from the date of the said first publication and before any order of distribution has been made on the estate of the deceased.

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. The redemption period is three years. For chattel mortgages sixty days unless property has been sold.

Notaries Public are appointed by the governor in June to serve five years. They have the power to administer oaths, take acknowlments to deeds and other instruments, take depositions and protest bills of exchange, notes and checks, and may issue subpoenas to witnesses in any case, civil or criminal, and in any matter before any body or person authorized by law to summon witnesses.

Notes and Bills of Exchange are governed by the provisions of Title XXI of the General Laws, 1923, entitled "Of Negotiable Instruments," which is the Uniform Negotiable Instruments law, and has been in force in this State since 1899.

Partnership, Limited, may be formed by two or more persons 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 Chapter 186 of the General Laws, 1909, as to the liability of the partners.)

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. (See Claims against the Estates of Deceased Persons.)

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 January 1, 1924, and is termed "General Laws of Rhode Island, 1923"

Sale of Goods. Uniform Sale of Goods has been in effect in this State since April 30, 1908.

Sales in Bulk. The transfer of the major part in value of the whole of a stock of merchandise and fixtures, or merchandise, or fixtures, otherwise than in the ordinary course of trade and in the regular and usual prosecution of the transferrer's business, whether in one or more parcels or to one or more persons, provided the transfer is all part of substantially one transaction or proceeding or occurs substantially at one time, shall be fraudulent and void as against all creditors of the transferrer unless the transferee demands and receives from the transferrer a written list of the names and addresses of the creditors of the transferrer and certified by him, under oath, to be, to the best of his knowledge and belief, a full, accurate, and complete list of his creditors; and unless the transferee shall, at least five days before such transfer, notify personally, or by registered mail, every creditor whose name and address are stated in said list of the proposed transfer.

Service. Superior 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.

Supplementary Proceedings. Judgment creditor whose execution has been returned nulla bona may apply to court rendering judgment for issuance of citation to debtor to appear and show cause why examination into his circumstances should not be had and decree entered ordering payment of judgment in whole or by installments. Citation shall be served six days before its return day. At hearing, the court shall examine debtor as to the circumstances, his income and ability to pay, and if finds able to pay, shall after allowing sufficient for support of debtor and his family, order payment in whole or by installments. If payments are not made, debtor liable for contempt.

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. All corporations doing business within the State are taxed upon the corporate excess. Stock in all such corporations is exempt from taxation in the hands of resident stockholders. Every corporation, joint stock company or association incorporated in this State, which pays no tax to the State or a tax less than two and fifty-one hundredths dollars on each $10,000 or fractional part thereof of its authorized capital, except insurance corporations, religious, charitable and literary corporations, public service corporations, shall pay an annual franchise tax to the State upon its authorized capital stock, which, when added to any tax paid by it in the same year to the State on its corporate excess, shall equal two and fifty-one hundredths dollars for each $10,000 or fractional part thereof or such authorized capital: Provided, however, that such tax shall not be assessed against any such corporation in the year in which said corporation is incorporated. There is a uniform tax throughout the State on intangible personal property of 40 cents on the hundred. The tax upon real estate and tangible personal property is fixed by each town or city. Individual tax payers are not obliged to make returns, but are without recourse if such returns are not made. If returns are made tax payer is entitled to an appeal to the superior court in the event of over-taxation. Taxes are a lien on real estate and land may be sold for taxes after proper assessment and levy. Owner, his heirs or assigns, may redeem within one year by paying purchase money with 20 per centum in addition.

By the Inheritance Tax Law of 1926, two methods of taxation are imposed, one, a tax upon the net estate of resident and non-resident decedent, the other a taxu pon the respective shares inherited from the decedent.

The net estate tax applies to net estates in excess of $10,000, and is at the rate of one percent, 2 percent if transferred in such a way that the collection of the tax is postponed until the transferee comes into beneficial enjoyment thereof. In general this tax applies to any disposal of an estate in the nature of a final distribution and any such distribution or transference within the period of two years prior to decease is presumed to come under the provisions of this act. When property passes to any grandparent, parent, husband, wife, child, brother, sister, whether the said child, brother or sister shall be of the whole or the half blood, nephew, niece, wife or widow of the son or husband or widower of the daughter or any child adopted in conformity with the laws of Rhode Island or the laws of any other state or country or any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, said relationship beginning before such person attained the age of twenty-one years, or to any lineal descendant born in lawful wedlock, the tax so imposed is at the following rate: One-half of one per cent upon all amounts in excess of certain exemptions and not exceeding $50,000. At the rate of one per cent upon all amounts in excess of $50,000, and not exceeding $250,000. At the rate of one and one-half per cent upon all amounts in excess of $250,000, and not exceeding $500,000. At the rate of two per cent upon all amounts in excess of $500,000, and not exceeding $750,000. At the rate of two and one-half per cent upon all amounts in excess of $750,000, and not exceeding 1,000,000. At the rate of three per centum upon all amounts in excess of $1,000,000. When property passes to others than those above mentioned, the tax imposed is at the following rate: five per cent upon all amounts in excess of certain exemptions and not exceeding $50,000. At the rate of six per cent upon all amounts in excess of $50,000, and not exceeding $250,000. At the rate of seven per cent upon all amounts in excess of $250,000, and not exceeding $1,000,000. At the rate of eight per cent upon all amounts in excess of $1,000,000. In addition to the above taxes a further tax is imposed at varying rates upon varying amounts exceeding $250,000. Provided, however, that whenever these taxes exceed the amount allowed as a credit under the provisions of Section 301, Sub-Section B of the Federal Revenue Act of 1926 apportioned to this state through the General Treasurer, shall upon the order of the Board of Tax Commissioners, refund without interest such excess to the person by whom the tax imposed was paid. Only that part of the estates of non residents consisting of real property or tangible property having an actual situs within the state are subject to this tax. Certain inventories must be filed with the Board of Tax Commissioners. The Board of Tax Commissioners with the approval of the Attorney-General may effect such settlement of the amount of any taxes imposed as they shall deem to be for the best interests of the state and the payment of the amount so agreed upon shall be a full satisfaction of such tax. These taxes are a lien upon the property of the estate until paid.

Testimony. (See Evidence.)

Trade Name. Any person carrying on business, except a corporation, or a partnership which contains the name of at least one member of the firm, shall file in the town or city clerk's office a sworn statement, giving the assumed name and the name of the person or persons carrying on the business. Failure to comply makes the person or persons liable to one year's imprisonment, or to a fine not exceeding $500.

Transfer of Corporation Stock shall be made agreeable to the provisions of Chapter 840 of the Public Laws of the State of Rhode Island, 1912, commonly known as Uniform Stock Transfer Act.

Trust Deeds are executed the same as other deeds.

Warehouse Receipts must embody within its written or printed terms location of the warehouse where the goods are stored, date of issue of the receipt, its consecutive number, a statement whether the goods received will be delivered to the bearer, a specified person or a specified person or his order, the rate of storage charges, a description of goods or the packages containing them, the signature of the warehouseman or his agent. Uniform Warehouse Receipt Act is in force in this State.

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 or city clerk's office of the town or where the testator lived unless otherwise provided by law or charter to the contrary

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

SYNOPSIS OF

THE LAWS OF SOUTH CAROLINA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by Messrs. HYDE, MANN & FIGG, Attorneys at Law, The Peoples Office Bldg., Broad & State Sts., Charleston.
(See Card in Attorneys' List.)

Accounts and Claims. Accounts shall 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 immediately upon delivery. Before any deed or other instrument in writing can be recorded in the proper office within the State, the execution thereof shall first be proved by the affidavit, in writing, of a subscribing witness to such instrument, taken before some officer within the state competent to administer an oath, or before a commissioner or commissioners appointed by dedimus, issued from the court of common please 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, 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. Practice is under a Code of Civil Procedure.

Administration of Estates. Letters testimentary 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. The probate judge administers estates of intestates whose estates are less than $500, without requiring the appointment of an administrator. Property or money of intestate in possession of others shall be turned over to probate judge in such cases, and his receipt shall be a discharge of all liability therefor. In case of minor distributees, where they are over 14 years of age, payment may be made by him to such minors; where under fourteen, payment may be made to parent of such child, or to other person with whom such child is bona fide resident, this to be established to satisfaction of probate judge before he pays.

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. 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 500 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 can not own more than 500 acres of land in this State.

Arbitration. Sworn arbitrators may be appointed to settle differences, the parties giving bond to abide result, with right of appeal to circuit court.

Arrest. Persons guilty of fraud in the contraction of a debt, or in disposing of or concealing property, may be arrested and held to bail.

Assignments and Insolvency. Insolvents may assign for benefit of creditors, without making preferences, and creditors may appoint agent to act with assignee. Debtor can require creditors to release. All transfers within ninety days of assignment are 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 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. By statute, person damaged in person or property by careless or negligent operation of auto vehicles may attach same, securing lien next to taxes.

Banks. Sec. 3968. 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. 3969. 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. 3970. Banks forfeit $500 a week, if bank notes issued and in circulation exceed for more than four successive weeks three times the amount of gold and silver coin and bullion held by the bank.

Sec. 3971. The amount of such notes to be certified to comptroller-general each week, together with amount of such gold and silver coin and bullion.

Sec. 3972. Failure in those matters forfeits $100 a day to be recovered at the suit of the State.

Sec. 3973. Felony for officer to receive deposits or trusts, after he shall become aware of insolvency. Parties injured may also recover civilly against such officer.

Sec. 3974. Banks not compelled to pay notes or bills torn in half without production of both halves or bond of indemnity.

Sec. 3975. Defines "bank notes."

Sec. 3988. Banks must publish quarterly statements in newspapers, sworn to by three directors.

Sec. 3999. The liability to a bank of any person other than a director or officer, shall not exceed 10 per cent of the capital. This debt not to include bills of exchange drawn against values and commercial and business paper. Two-thirds of directors can increase 10 per cent limit to 15 per cent only.

Sec. 4000. Directors and other officers shall only borrow on security to be approved by two-thirds of directors in writing. Directors can not endorse for each other. Companies and firms of which directors are officers or members shall not borrow more than 10 per cent of capital. Officers violating subject to criminal prosecution.

How Incorporated under General Laws. Under the code of 1922, Section 4301, there is no distinction in the incorporation of banks from the incorporation of any other corporation. However by Act of 1926, C. 515, no bank shall be organized until its capital stock be paid in full, and notes of stockholders, notes and mortgages on property, real, personal or mixed, shall not be accepted as cash in payment of the initial shares of its capital stock. There must be, in addition thereto, an amount of at least 10% available for paying organization expenses. Before a charter can issue, the bank must have the approval after investigation of the State Treasurer, State Bank Examiner, and Secretary of State. The minimum capital stock shall be as follows: (a) in towns of less than 3,000, $25,000; (b) in towns of from 3,000, 10,000, $50,000; (c) in towns over 10,000, $100,000.

Banks are required annually to set aside not less than one-tenth of the annual net earnings until the surplus is equal to twenty-five per cent of the capital stock, and it is made the duty of a bank examiner to enforce this law. It shall also at all times maintain either the cash or as cash in banks 3 per cent of its time deposits and 7 per cent of its checking deposits.

State banks which have branches in more than one county in this State have recently been made subject to the same law which applies to textile manufacturers, fertilizer companies, etc., as to the returns upon their property and making them subject to the board of equalization of the State.

Any bank officer who issues to the comptroller general or any of his clerks or agents a false certificate of the amount of cash on deposit to the credit of any public officer for use in settlement with such public officer shall be guilty of a misdemeanor. Misdemeanor to make false and malicious statements calculated to cast suspicion on solvency of any bank in South Carolina. By following the procedure laid down in XXXIV Statutes at Large, (S.C.) 1926 Acts, C-508, P-945, any National Bank which may be allowed under the laws of the United States to dissolve its organization as a national banking association may be chartered under the laws of South Carolina.

Bank Examiner. Code 1922, Sec. 3977. 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. 3978. His duties shall be to examine fully and carefully and report the condition of all banks in the State.

Sec. 3981. Shall have right upon request of majority of directors of any bank or trust company to take and retain sole possession of property and business of bank for not exceeding thirty days, and during this time no action may be taken against bank or stockholders except in liquidation proceeding; bank examiner upon taking charge shall call meeting of stockholders.

Sec. 3982. Fixes compensation and terms of office.

Sec. 3983. Fixes time for examination, and mode of payment of salary and expenses by the banks.

Sec. 3984. Bank Examiner shall examine all Branch banks at least once a year. All such banks shall indicate on their stationery, checks, notes, advertisements, etc., the fact they are branch banks and the name and place of business of the parent bank.

Sec. 3985. Upon discovery that such institution is insolvent or fraudulently or dishonestly conducted, the examiner may obtain order of court and take charge of and administer assets.

Sec. 3986. To make special examination upon petition of stockholders.

Sec. 3987. Examiner to be expert accountant and practical bank officer.

Sec. 3990. Statements to be published when called for by examiner and at least once in each quarter.

Criminal code Sec. 209. Provides punishment for interference with examiner.

Sec. 3991. Nothing contained in the Act shall apply to any national bank.

Banking. It is unlawful for any person to obtain money or other property with fraudulent intent, or to obtain credit with like intent, by means of check, draft or order, of which such person is maker or drawer, or which, though he is not maker or drawer, he with like intent, utters or delivers, aids or abets another to utter or deliver. If such paper is not paid by the drawer, the person so drawing or uttering same shall be guilty of misdemeanor. Fact that paper is not paid because drawer did not have funds on hand with drawee or bank, and fact that paper not made good in seven days prima facie evidence of fraudulent intent. Prosecution once begun cannot be discontinued. The word credit is construed to mean securing further advances of money or goods by worthless check on existing account in full or inpart.

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.

Blue Sky Law. Any company, except certain specified ones, selling, offering for sale, taking subscriptions for, or negotiating for sale in any manner whatever in this State any stocks, bonds, or other securities of its own issue shall file in the office of the Insurance Commissioner a statement showing in full detail the plan upon which it proposes to transact business, a copy of all contracts, stocks, bonds or other instruments which it proposes to make with or sell to its contributors or customers together with a copy of its prospectus and of the proposed advertisement of its sale of stocks, bonds, or other securities, which statement shall also show the name and location of main office of the company, names and addresses of officers, and an itemized account of its financial condition, the amount of its assets and liabilities and such other information touching its condition and affairs as the Commissioner may require.

It shall file a copy of its articles of incorporation, constitution and by-laws and a certificate with proper officer of the State showing its authority to transact business. The above described papers shall be verified by oath.

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

It shall pay a filing fee of one-tenth of 1 per cent upon the face value of the securities it will offer for sale. (Such fee shall not be more than $100.00 nor less than $2.50.)

It shall appoint the Insurance Commissioner its attorney to accept service, if it be a foreign company.

It shall register each agent for the sale of its stock and pay therefor $1.00.

For fuller details of management, etc., reference is made to the law itself. See Acts of 1915.

Chattel Mortgages. Description of property covered must be in writing or typewriting, but not in print. The law in regard to chattel mortages 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 take effect as notice to subsequent purchasers without actual notice and subsequent creditors only from the day and hour of recording.

Claim and Delivery. The plaintiff in an action to recover the possession of personal property may at the time of issuing the summons or at any time before answer claim the immediate delivery of such property by making the necessary affidavit and executing bond in double the value of the property, and defendant may require redelivery of property by executing a like bond.

Collaterals. Collateral loans are allowed in this State, and collateral notes are commonly used.

Contracts. Every agreement whereby the vendor or bailor reserves any interest in personal property, must be recorded in the same manner as mortgages. This is not applicable to livery-stable keepers and inn keepers. Contracts of sale for future delivery of certain bonds, stocks, and products are void, unless seller actually owns same at time of contract, or is duly authorized by owner, or actually intends to deliver product in kind. Burden is on plaintiff seeking to enforce contract to show this.

Ordinary provisions of statute of frauds in force in this State.

Conveyances. All conveyances of real estate must be signed and sealed by the grantor in the presence of two subscribing witnesses and recorded immediately. 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 composed 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, that not less than 50 per cent of the capital stock has been subscribed by bona fide subscribers; and such declaration shall further show, that after due notice, at a meeting of the subscribers, the organization has been completed by election of officers and directors, and bylaws have been adopted, etc.; that 20 per cent of the subscriptions of each subscriber has been paid in. The board of corporators on filing said declaration shall pay to the secretary of state a charter fee: When the said Charter is issued or renewed, the sum of one mill upon each dollar of the capital stock authorized up to and including $100,000; the sum of one-half of a mill upon each dollar of the capital stock exceeding $100,000 and up to and including $1,000,000; and the sum of one-fourth of a mill upon each dollar of the capital stock exceeding $1,000,000; for recording each declaration, petition or return precedent to the granting of any commission of corporators, charter, amendment of charter or increase, or decrease of capital stock, or renewal of charter, required by law to be recorded in said office, the sum of $2.50 for each paper so recorded; for filing each declaration or other paper, by any foreign corporation $5.00; for filing each charter granted in another state and by-laws adopted thereunder, or either required by law to be filed, $5.00; Provided, that nothing herein contained shall be construed to apply to municipal charters: Provided further, that nothing herein contained shall be construed to increase the fees for churches, lodges, colleges, schools or other eleemosynary organizations. No fee less than $5.00 in addition to the recording fee. Upon the filing of said declaration and the receipt of the recording fee of three dollars and the charter fee hereinbefore specified the secretary of state shall issue a certified copy of the declaration 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 installments has been paid in and the provisions of this are in other respects complied with. There is no stock liability in corporations organized under the constitution of 1895 and the code of 1922 except in the case of banking corportations 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 Code 1922, 4279 to 4288, 4302 and act of 1925, No. 166, page 244, protecting the rights of preferred stockholders.

Corporations. Unlawful discrimination for the purpose of destroying the business of any competitor in any locality by selling at a lower rate in one section than another is prohibited, and any person thus discriminating is subject to a penalty of not less than $500 or more than $5,000. In case of a corporation breaching this act, it becomes the duty of the secretary of the state to immediately revoke the permit of the corporation to do business in this State.

Corporations become subject to a penalty of not less than $500 if they pay any dividends unless actually earned.

Any officer of a corporation who wilfully uses the name of such corporation or his connection with it as officer thereof to obtain any credit or anything of value without authority from the corporation, shall be punished by imprisonment in the state penitentiary for not more than ten years.

The president or other officer who has the custody of the funds of any domestic corporation in this state shall annually make a report to each and every stockholder of such corporation who asks for it and a general itemized statement showing the actual assets and liabilities of the corporation and is guilty of a misdemeanor if he fails to comply with the request.

The act does not apply to railroads, banking or building and loan corporations.

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. Days of grace are not allowed in this State on any paper.

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 the clerk of any of the circuit courts, or any notary public, chancellor, judge or justice of the supreme court, or chief magistrate of a city in any of the United States, such notaries, etc., not to be of counsel, nor interested in the cause. 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.

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.

Dower may be renounced by the wife, if she be without this State, by dedimus or before any minister, ambassador, consul general, consul, vice-consul, deputy consul, consular agent, commercial agent of the United States or any other officer appointed by the United States in foreign countries with the power to administer oaths and having an official seal, or a clerk of a court of record or before a notary public, who must each append to the certificate the official seal used by him.

By Act of 1924, minor wife may renounce dower as though she were of age.

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 estopped to deny the truth of the statement in the application except for fraud.

Foreign Building and Loan Associations. Mortgages on lands in this state are subject to usury laws of this state. No greater rate than 8 per cent can be charged.

Foreign Corporations. All foreign corporations within sixty days from acquiring property or commencing business in this State, are required to file in the office of the secretary of state a written declaration designating some place within the State as principal place of business, at which all legal papers can be served, and also some authorized agent within the State upon whom process can be served to bind the corporation. A number of other requirements exist concerning the filing with the secretary of state of copies of the charter and by-laws and other matters of detail. The act is very mandatory in its provisions, and a fine of $500 is imposed for non-compliance.

Foreign Insurance Companies, Service on. Every foreign insurance company shall, before being licensed, appoint in writing the Insurance Commissioner and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the company, and that the authority shall continue in force so long as any liability remains outstanding in the State. Copies of such appointment, certified by the Insurance Commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be in duplicate and shall be deemed sufficient service upon such company. When legal process against such company is served upon said Insurance Commissioner, he shall forthwith forward by registered mail one of the duplicate copies prepaid directed to the Company at its home office.

Foreign Judgments. Foreign judgments may be sued on in this State and do not constitute a lien till judgment is recovered in this jurisdiction.

Fraud. The statute of frauds and perjuries, commonly known as 29 Car. II and also "the Statute of Elizabeth," is of force in this State.

Garnishment. No garnishment law in this State. (See Attachment.)

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, the 3d day of June, and the 11th of November of each year shall be legal holidays. Provided that each first Monday in any month shall be a legal day for judicial or sheriff's sales or the transaction of any other legal business. In Charleston and Richland County 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. Real property of the value of $1,000 and personal property of the value of $500 shall be exempt from levy and sale.

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.)

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Insurance Companies. Recent 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.

It is unlawful for any fire insurance company to enter into any compact with other fire insurance companies or associations for the purpose of governing or controlling rates for fire insurance charged on any property in the State.

The law requires a sworn statement by each company to be filed with the Insurance Commissioner of the State, that the company has not within twelve months previous entered into any trust combination, etc., for preventing competition and insurance rates, and provides a penalty in case of a false statement or a fine of not less than $100 or more than $1,000 and confinement in the penitentiary for one year or in the discretion of the Court confinement in jail for not less than one month nor more than twelve.

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, devises, legatees, personal representative, or any creditor can plead the benefit of this statute.

Investment Companies. Investment Companies, before selling or offering for sale any securities of its own issue, shall file in the office of the Insurance Commissioner a detailed plan of how it proposes to transact its business, a copy of all contracts, etc., which it proposes to make or sell with its contributors or customers, a copy of the prospectus and advertisement, the names of its officers, and an itemized account of its financial condition. If it is a foreign investment Company, it shall also file a copy of the laws under which it is incorporated and of its Charter and of its Constitution and Bylaws, and shall pay a filing fee of one-tenth of one per cent upon the face value of the securities for the sale of which application is made. The Insurance Commissioner shall be made the party upon whom process shall be served.

The Commissioner is authorized to investigate and upon the information to issue a license, and it is unlawful to advertise or offer securities without the Commissioner's certificate; and on or before the 1st day of April in each year a statement must be filed with the Commissioner showing the condition at the close of business on the preceding December 31st.

Judgments are a lien on lands within the county for ten years from the time of entry and may be renewed by process before expiration of ten years for ten years more, 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. By statute a married woman may sue and be sued as though she were unmarried, but execution must be enforced out of her sole and separate estate.

Merchants. 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 postoffice 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. This act now applies to "fixtures" by z amendment of 1924.

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 immediately to protect lien. Mortgages of realty are foreclosed by ordinary suit of complaint and summons, and chattel mortgages are enforced by mortgageee taking possession of the goods and selling them. Different books must be provided by clerks and registers of mesne conveyances of the several counties, for the recording of chattel mortgages and mortgages on real estate. Renunciation of dower by a married minor valid. Chattel mortgages after breach of condition and before sale may be discharged by payment or tender of payment.

Lands can not be sold under power contained in mortgage unless the mortgagor agrees in writing on the face of the mortgage to the amount due thereupon within twelve months. Assignments of mortgages must be recorded in like manner as mortgages to bind third parties. For methods of satisfying mortgage, see act of 1925, No. 49, p. 83.

Negotiable Instruments Law. The uniform Negotiable Instruments Law as of force in most of the States was made of force in South Carolina, in April, 1914.

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. No protest is needed on an inland bill. On all bills of exchange drawn on persons resident within the United States, and without this State, and returned protested, the damage 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. 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. (Limited to Charleston and Richland County.) (See Holidays, Negotiable Instrument Law.)

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, Negotiable Instruments Law.)

Recording Laws. (See Acknowledgments.) Registers of Mesne Conveyance are required to keep a file book in which shall be filed all conveyances, mortgages, assignments of mortgages, liens, contracts and papers relating to real and personal property, by entering therein the names of the grantor and grantee, mortgagor and mortgagee, obligor and obligee, date of filing, and nature of the instrument, immediately upon its lodgment for record; and such filing shall be notice to all persons sufficient to put them upon inquiry of the purport of the instrument so filed and the property affected thereby (Counties of Clarendon, Colleton and Sumter excepted).

A justice of the peace "who must append to the certificate his official seal" can now take probates without the limits of the State as well as within.

Contracts for conditional sales of personalty title being reserved in the vendor must, in order to protect as against subsequent creditors both lien creditors or simple contract creditors, be put upon record in the same manner as mortgages. Act not applying to livery stable people or persons renting out or hiring property for temporary use, or any personal property deposited as a pledge or collateral to a loan. Assignments of mortgages must be recorded to obtain the benefit of the act.

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. There is no equity of redemption under a real estate mortgage after foreclosure and sale. Mortgagor may pay up mortgage, interest and costs at any time before sale of property. (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 disinterested 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 act 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 practice is regulated by a Code of Civil Procedure. 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 of 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 sheriffs' deed under such sale shall be prima facie evidence of good title in the purchaser. No action for the recovery of land so sold shall be maintained unless brought within two years from date of said sale. All lands not sold are forfeited to the State. The tax is in all cases a first lien as against the estates of all deceased persons; of bankrupts and insolvents; of all persons making assignments for the benefit of creditors; as against all trust estates; as against all personalty had on chattel mortgage or pledge; as against all personal property held in fraud of creditors; and as against all stocks in trade, etc., of merchants and manufacturers. Property must be listed for taxation between January 1st and February 20th of each year. (See Section 525 of the Code of 1922.)

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.

Trusts. Religious, educational or charitable trusts created by a non-resident of this state, which is valid under the laws of the state of his domicile, shall be valid under the laws of this state, provided one or more of the beneficiaries is a resident of, or located in, this state.

Gifts, devises, etc., in the form of trusts or otherwise to charitable, educational or religious institutions, shall not be valid because the trustees are given discretionary power in selecting the objects or beneficiaries of such trusts; the title to such property shall vest in the trustees and their successors according to the terms of the instrument; and if no trustees are named, or no provision provided for their selection, the Court of Common Pleas for the proper county shall appoint trustees to execute the trust according to the intent of the instrument. Such trustees shall have all the powers conferred upon trustees under the instrument.

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.

Typewriting is authorized by the statute.

for FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

SYNOPSIS OF

THE LAWS OF SOUTH DAKOTA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by MESSRS. BAILEY & VOORHEES, Attorneys at Law.
Bailey-Glidden Bldg., Sioux Falls.
(See Card in Attorneys' List.)

Acknowledgments. The official should certify that before him "personally appeared ..... known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same;" and in the case of a corporation, that before me personally appeared ....., known to me to be the ..... of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

Actions. South Dakota is a code state and all distinctions between actions at law and suits in equity, as to the forms of such actions and suits, are abolished. A non-resident plaintiff must give security for costs upon order of the court made upon application of the defendant.

Administration of Estates is had in the county court. Notice for proving claims must be given by publication for four weeks. In all estates under $5,000 in value claims must be presented within four months from the first publication of the notice; in estates exceeding $5,000 in value, within six months from such publication.

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.

Arbitration. There is no provision in the code for arbitration. An agreement to submit a controversy to arbitration can not be specifically enforced.

Arrest. In certain classes of civil actions chiefly those in which fraud enters, the defendant may be arrested. This remedy is seldom used and the procedure is technical. A bond must be given by the plaintiff before the arrest can be made.

Assignments and Insolvency. A law providing for assignments for the benefit of creditors is in force. The assignee acts under the direction of the circuit court. The operation of the law has been practically suspended by the National Bankruptcy Act.

Attachment process issues at the time of issuing the summons or at any time afterward in all actions against a corporation which has no officer, agent or attorney upon whom the summons can be served within this State, or non-resident defendant, or when defendant has departed 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 or delay creditors or when the debt sued upon was incurred for property obtained under false pretenses, and also in an action to recover purchase money for personal property sold to defendant, such property may be attached. 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. Banking associations may be formed to do general banking except issuing bills as money. Capital required is graded: Towns of 1,500 or less, at least $15,000, towns of over 1,500 and not more than 2,000, at least $20,000; towns of over 2,500 and not less than 5,000, at least $25,000; and in towns of over 5,000, at least $50,000. Shares of stock must be $100 each. Each director must own at least five shares of stock. Each shareholder is individually responsible, equally and ratably and not one for the other, for the benefit of creditors of the bank to the amount of their stock, at par value thereof, in addition to the amount invested in said stock.

Blue Sky Law. (See Sale of Securities.)

Collaterals. There are no statutory provisions concerning them. The common law governs.

Conditional Sales. The uniform Conditional Sales Law has been in force since July 1, 1919.

Consignments. There are no penal provisions regarding consignments.

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 (which, however, instead of being witnessed may be acknowledged) satisfactions thereof, and wills, which must have two witnesses. Quitclaim deeds, unless otherwise stated therein, have substantially the same effect as special warranty deeds. Deeds executed subsequently to June 30, 1911, to be entitled to record, must contain the postoffice address of the grantee.

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. The Uniform Stock Transfer Act has been in force since July 1, 1921.

Corporations, Foreign. No corporation, incorporated or organized otherwise than under the laws of this state, except railroad corporations, corporations or associations created solely for religious or benevolent 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 in this state (except such as comes within the commerce clause of the federal constitution not affecting the police powers of the state) or acquire hold or dispose of property in this state until such corporation shall have caused to be filed in the office of the Secretary of State a copy of its charter, articles of association or incorporation and all amendments thereto, duly certified by the Secretary of State of the state wherein the corporation was organized, and also an appointment of the Secretary of State as its agent resident in the state of South Dakota for the service of legal process. However, any foreign corporation may without being licensed to do business in the state advance and loan money therein and take, acquire, hold and enforce notes, bonds, mortgages or trust deeds given to represent or secure money so loaned or advanced or for other lawful consideration, provided, however, that any such corporation, except a savings bank or trust company which is engaged solely in loaning money secured by mortgages on real estate, which shall transact any such business subsequent to July 1, 1925, shall first file with the Secretary of State an appointment of the Secretary of State as its agent in the state for the service of process. A fee of $1.00 for every $1,000 of the capital stock of the corporation exceeding $25,000 employed or to be employed in the state is to be paid to the Secretary of State. An annual statement as of December 31 is to be filed prior to March first next.

Courts. Terms and Jurisdiction. Circuit courts, except in the cases hereinafter stated in which their jurisdiction is concurrent with the county and municipal 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 10,000 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. Municipal Courts, which exist in a few cities, have concurrent jurisdiction with the Circuit Court throughout the county in which the city is located, in civil cases in which the amount involved is five hundred dollars or less.

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 a justice of the peace, notary public, United States, 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 of 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 and wife, or 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 and the estate does not exceed $20,000, all the estate goes to the surviving husband or wife; if the estate exceeds $20,000, the first $20,000 goes to the survivor, and of the excess, one-half goes to the survivor and the other half to the decedent's father and mother in equal shares, and if either is dead, the whole of such other half goes to the other, but if neither such father nor mother survive, such other half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister. If decedent leave no issue, nor husband, nor wife, the estate comes to the father and mother in equal shares, or if either is dead, then to the other; if there be no issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of decedent, and the children of any deceased brother or sister, by right of representation. 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.

Dower. Dower and curtesy are abolished.

Executions issue as of course at any time within five years after judgment, and must be returned within sixty days. Lands levied on need not be appraised, but notice of sale must be given. Same provisions apply in justice's courts as to levy, etc., on personal property. There is no stay law, and execution can only be stayed by order of the court for irregularity, by injunction, or by appeal with security given. Real estate sold under execution may be redeemed within one year.

Exemptions allowed are a homestead not exceeding one acre in area, if within a town plat, or 160 acres if not. The homestead exemption is limited to $5,000 in value. Certain personal property is absolutely exempt, such as family pictures, school books, lot in a family burying ground, etc. Additional personal property exemptions to the amount of $750 are allowed and may be claimed to the head of a family, and to a single person to the value of $300. In lieu of the same certain specific articles may be selected and held as exempt.

Fraudulent Conveyances. The uniform Fraudulent Conveyances Law has been in force since July 1, 1919.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Garnishment. This remedy lies in all courts, upon affidavit for in showing indebtedness, and that some person or corporation within the State 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 sureties, that the judgment if recovered will be paid. The garnishee may defend for himself.

Holidays. Are every Sunday, January 1st, February 12th, February 22nd, and May 30th, July 4th, the first Monday in September, November 11th, December 25th, and every day on which an election, either primary or general, is held throughout the State, and every day appointed by the President of the United States or the Governor of this State, for a public fast, thanksgiving, or a holiday.

Husband and Wife. (See Married Women, post.)

Interest. Legal rate, 7 per cent; but parties may contract in writing for 10 per cent, except that in real estate loans the rate shall not exceed 10 per cent including commissions. 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, 7 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 transcripted, 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. The Uniform Declaratory Judgments Act has been in force since July 1, 1925.

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 material, 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 ninety days after such materials shall have been furnished and labor performed, as against some classes of public service corporations the account or claim is to be filed in the office of the Secretary of State. 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, except mortgage foreclosures, twenty years; on real estate mortgages (foreclosure thereof) fifteen years, and on judgments, or decrees of any court other than the courts of this State, ten years; of the courts of this State, twenty years.

Married Women retain their own real and personal property, and may make contracts, sue and be sued, as if sole. Neither husband nor wife has any interest in the property of the other. Dower and curtesy are abolished. Married women retain the same legal existence and personality after as before marriage, and shall receive the same protection of all rights as a woman which her husband does as a man, and has the same right to sue in her own name as her husband has in his.

Mortgages on real property are executed same as deeds. The execution of a mortgage upon a homestead, even though it be for part of the purchase price, by both husband and wife is necessary to its validity. Mortgages containing a power of sale may be foreclosed by advertisement. Chattel mortgages must be executed in the presence of two witnesses and it must appear from the mortgage that duplicate of it has been received by the mortgagee. The mortgage is void as against creditors and subsequent purchasers and encumbrancers in good faith and for value unless it is filed in the office of the register of deeds of the county where the mortgaged property is situated. A chattel mortgage is not valid as against creditors and subsequent purchasers or encumbrancers in good faith after expiration of six years from filing thereof. Chattel mortgages may be foreclosed by advertisement. Real estate mortgages and assignments thereof, to be entitled to record, must contain the post office address of the mortgagee or assignee, as the case may be.

Notes and Bills of Exchange. The uniform Negotiable Instruments Law has been in force since July 1, 1913.

Partnership. Both uniform partnership and the uniform limited partnership acts are in force.

Powers of Attorney. A power of attorney to convey or mortgage real property must be acknowledged and recorded in the office of the register of deeds of the county in which the property is situated and can only be revoked by an instrument in writing acknowledged and recorded in the same office. (See Acknowledgments and Conveyances.)

Probate Law. (See Administration, Descent and Distribution, and Wills.)

Protest. (See Notes and Bills of Exchange.)

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 such creditors within sixty days after the preceding redemption. There is no right of redemption in case of a sale of personal property.

Replevin. Personal property wrongfully taken or detained may be replevined by the owner or party entitled to possession. A replevin bond in double the value of the property must be furnished.

Sales. The Uniform Sales Act has been in force since July 1, 1921. (See Conditional Sales.)

Sales in Bulk. A bulk sales law is in force.

Sales of Securities. A law regulating the sale of certain classes of securities, commonly spoken of as a blue-sky law, is in force. This law in some respects is quite stringent and is of such character that it is impracticable to digest its provisions. Any one interested in it should consult the law itself or take the matter up with the State Securities Commission which has charge of the enforcement of the law.

Taxes become due and payable on the first day of January, and delinquent on the first day of May, 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 December following, and may be redeemed within two years by payment of purchase money and interest at the rate of 12 per cent per annum (sometimes less, depending on the terms of the sale) and all taxes subsequently paid. Taxes become a lien on real property as between vendor and vendee on the first day of January, and if personal property 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.

Warehouse Receipts. The uniform Warehouse Receipts Law has been in force since July 1, 1913.

Wills. Every person over the age of eighteen years, of sound mind, may by last will, dispose of all his or her estate, real and personal. A married woman may dispose of all her separate estate by will, without the consent of her husband. A will must be subscribed at the end thereof by the testator himself, or some person in his presence, and by his direction, must subscribe his name thereto. Unless the will be an holographic will, the subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him, or by his attorney. 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 to 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 injury received the same day.

SYNOPSIS OF

THE LAWS OF TENNESSEE

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by A. J. GRIGSBY, JR. Attorney at Law, 924-926 Stahlman Bldg., Nashville.

(See Card in Attorneys' List.)

Acknowledgments within the State must be taken before a chancellor or judge or any court of record, or clerk of a court county, 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, and this must state when such officer's commission expires. 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. Chapter 82, Acts of Tennessee, 1921, provides, that all deeds or other instruments requiring acknowledgement, if acknowledged without the United States, shall be acknowledged before an Ambassador, Envoy or Charge d'Affairs of the United States in the country to which he is accredited, or before one of the following officers commissioned or accredited to act at the place where the acknowledgement is taken, and having an official seal, viz.; any Consular Officer of the United States, a Notary Public or a Commissioner or agent of this state having power to take acknowledgement to deeds. That every certificate of acknowledgement made without the United States, shall contain the name or names of the person or persons making the acknowledgement, the date when and the place where made, a statement of the fact that the person or persons making the acknowledgement knew the contents of the instrument, and acknowledged the same to be his, her, or their act; the certificate shall also contain the name of the person before whom made, his official title, and be sealed with his official seal, and may be substantially as follows:

.....(Name of Country).....(Name of City, Province, or other political subdivision). Before the undersigned.....(name of officer and designating his official title) duly commissioned, (or appointed) and qualified, this....day personally appeared at the place above named.....(naming the person or persons acknowledging) who declared that he (she or they), knew the contents of the foregoing instrument, and acknowledged the same to be his, (her or their), act.

Witness my hand and official seal this....day of.....19....

Seal.....(Name of officer).

.....(Official title).

When the seal affixed shall contain the name or the official style of the officer, any error in stating or failure to state otherwise the name or the official style of the officer, shall not render the certificate defective. A certificate of acknowledgement of a deed or other instrument acknowledged without the United States before any officer mentioned above, shall also be valid if in the same form as now or hereafter may be required by law, for an acknowledgement within this State.

Acts of Tennessee, Chapter 48, 1919, provide a uniform form of acknowledgment for the authentication of acknowledgment for record of written instruments, and are as follows:

"Personal"

State of Tennessee

County of ..... On this ..... day of .....192...before me personally appeared.....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.

By Attorney

State of Tennessee

County of ..... On this .....day of ..... 192...before me personally appeared .....to me known to be the persan who executed the foregoing instrument in behalf of .....and acknowledged that he executed the same as the free act and deed of said .....

Corporations

State of Tennessee

County of..... On this .....day of .....192...before me appeared..... 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 said 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 .....acknowledged said instrument to be the free act and deed of said corporation (or association). If corporation has no seal, than omit words "corprate seal" and add that the corporation has no seal. In all cases add signature and title of offices taking the acknowledgment.

Where acknowledgments are taken outside of the State, the following certificate should be appended thereto:

State of .....

County of .....

I, ... Clerk of the ....., in and for the said County, which Court is a Court of Record having a seal (or I, ...), and ....., the Secretary of State of such State or Territory), do hereby certify that ..... by and before whom the foregoing acknowledgment (or proof), was taken was at the time of taking the same a Notary Public, (or other officer) residing (or authorized to act), in said County, and was duly authorized by the laws of said State, (Territory or District) to take and certify acknowledgments, or proofs of deeds of land from said State, (Territory or District) and further that I am well acquainted with the handwriting of said ....., and that I verily believe that the signature to said certificate of acknowledgment (or proof), is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court (or State), this ..... day of.....19....

.....

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

The acknowledgment of a married woman is taken in the same manner as if she was a feme sole.

Notaries must note the expiration of his or her commission on every certificate of acknowledgment.

Actions. All contracts may be sued on in the same form of action. The common law forms and pleadings modified by statute are used. Non-residents must in all cases give bonds.

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 jurisdictions. 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 a distribution 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.

After Executor or Administrator has been appointed, all claims must be filed with such officer, and all creditors are allowed two years in which to file claims. No suit can be brought against the Executor or Administrator until after six months has elapsed after his appointment and not after two years, has elapsed. The two years beginning to run after the expiration of the six months. (Acts of 1923 repealing Acts of 1921.)

(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 commissioner of Tennessee, notary public, justice of the peace, judge of a 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.

Assignments. The Act of 1895 regulating general assignment was declared unconstitutional by the supreme court and the Act of 1881 goes back into effect. Under this act, preferences in general assignment are not allowed but special assignments are made with preferences, and under these the act of 1881 as to general assignments is practically rendered nugatory.

Attachment process will issue when the debtor resides out of the State; is about to remove, or has removed himself or property out of the State; has removed or is removing himself from the county privately; is concealing himself, so that the ordinary process of law cannot be served upon him; absconds or is absconding or concealing himself or property; has fradulently 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 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 and 4 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. There is no law regulating the class of bonds in which savings banks may invest.

The Legislature of 1913 passed an act creating a Banking Department to regulate, examine, control and supervise banks (see Chapter 20, Senate Bill 174, Acts of Tennessee, 1913). Under this act every corporation doing a banking business under the laws of the State of Tennessee, whether private or incorporated, shall be subject to the supervision and inspection of the superintendent of Banks, who shall examine every banking concern in the State at least twice each year. The word "bank" or "banker" means every trust company, loan company, mortgage security company, safe deposit company, receiving money on deposit and every individual, firm or corporation doing a banking, loan or discount business and receiving money on deposit and performing the functions of a bank. The Superintendent of Banks shall also have the power to examine every agency of any foreign bank located in the State. If the Superintendent of Banks finds upon examination that a bank is in an unsafe condition or is insolvent or unable to meet its obligations in the ordinary course of business, he shall require the bank or its officers or directors to execute a good solvent bond in an amount sufficient to protect its depositors and other unsecured creditors. In case the bank refuses or fails to thus protect its depositors, the Superintendent of Banks shall file a petition in the Chancery Court, requiring the bank to show cause within five days why it should not be adjudged insolvent. Pending the hearing or the preparation of bond, the Superintendent of Banks shall take charge of the affairs of the bank and hold them in status quo. No "bank" shall reduce its cash on hand below 10 per cent of its demand deposits, although the bank may include in its cash the amount of money on deposit on demand with other responsible banks. Every bank must make, on the call of the Superintendent, two reports each year, according to the form and at the time prescribed by the Superintendent, one of these calls shall be in the first half of the year and the other in the latter half of the year. The expenses of the Banking Department are to be defrayed by the banks of the State in proportion to each bank's combined capital, surplus and undivided profits, the amount per bank ranging from $10 per year for a bank with $10,000 capital, surplus and undivided profits to $500 per year for a bank whose capital, surplus and undivided profits are $1,000,000 or more.

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, 18199.

Blue Sky Law. Chapter 31, Acts of Tennessee, 1913, provides that every corporation, co-partnership, company or association, organized in Tennessee or elsewhere, whether said company be incorporated or not, which shall sell or negotiate for sale of any stocks, bonds or other securities or any lands or town lots situated outside of this State, other than bonds of the United States, State of Tennessee or some municipality of the State of Tennessee, and notes secured by mortgages on real estate located in the State of Tennessee, to any person or persons in the State of Tennessee, shall file in the office of the Secretary of State of Tennessee, together with a filing fee of $25.00, a full statement of the plan upon which it proposes to transact business, copy of all contracts, bonds or other instruments which it proposes to make with or sell to its contributors; shall show the name and location of the company, an itemized account of its actual physical and financial condition, amount of its property and liabilities and any other information touching its affairs as the Secretary of State may require. If the company be a co-partnership or unincorporated association it shall file with the Secretary of State a copy of articles of co-partnership or association and all other papers pertaining to its organization; if a corporation, organized under the laws of Tennessee, it shall file a copy of its articles of incorporation, constitution and by-laws, and every paper pertaining to its organization. If the company be organized under the laws of any other State or Territory or government it shall file with the Secretary of State of Tennessee, a copy of the laws of the State, Territory or government under which it exists, and a copy of its constitution and by-laws and articles of incorporation and all papers pertaining to its organization if not incorporated it shall file all papers, articles and agreements under which it exists. That all of the above papers if filed by a corporation must be verified by the oath of an officer of such corporation; if by an association or company must be verified by the oath of a member of the association or company. Every foreign company must file its written consent that actions or law may be commenced against them by service of process on the Secretary of State and agreeing that such service of process shall be binding upon them as if personal service were had; upon them; such agreement must have the seal of the corporation or signature of a member of the company; a corporation must send a copy of the order of the Board of Directors or managers of the corporation authorizing the Secretary and President of such corporation to execute the same; the Secretary of State shall examine into the affairs of such company proposing to do business and if in his opinion the company is solvent he may issue a statement to the company to that effect, but if he should find that the company is not solvent or that the investments do not promise a fair return upon the articles offered by it for sale he shall notify the company of his findings and it shall be unlawful for them to do business in the State of Tennessee until they have changed its constitution, by-laws, and articles of incorporation and its proposed plan of business and proposed contract and general financial condition so that the Secretary of State shall be satisfied as to their solvency before they will be allowed to do business. It shall not be lawful for any company, as principal or agent to do business until the above has been complied with.

No amendments to its articles of incorporation, constitution or by-laws shall be operative until a copy of the same shall have been filed with the Secretary of State, and it shall be unlawful to transact business on any other plan than that set out in the statement, if a new statement is desired for a new plan of business that shall be filed with the Secretary of State before they can operate under it. Any such company may appoint one or more agents who shall register with the Secretary of State for which registration he shall pay ten dollars ($10.00) and he shall represent such company until the first of March following. The Secretary of State may revoke the agents authority on sufficient cause. Every company shall file a statement of business on December 31st and June 30th, of each year, verified by the oath of its President and Secretary, or of two of its principal officers; statement to show financial condition, and each statement must be accompanied by a filing fee of $5.00; Any company failing to file such report within thirty days of time requested shall forfeit its right to do business in this state. Each company shall keep books by double entry, make a trial balance once a month, and all books must be opened for inspection by stockholders, investors in company or stocks, etc., offered for sale by company and to the Secretary of State or his deputies. The Secretary of State shall maintain supervision over the company and whenever necessary to do so, shall conduct an examination of the company's financial affairs and for each examination, the company examined shall pay a fee of ten ($10.00) dollars per day plus hotel and travelling expenses; upon failure to pay such fee the company shall forfeit all right to do business in this state. Whenever the Secretary of State shall decide that any company is insolvent or unsafe or is jeopardizing the interests of its stockholders or investors, or when such company shall fail or refuse to file any paper required, without satisfactory reason, the Secretary of State shall communicate with the Attorney General who shall apply for the appointment of a Receiver to take charge of and wind up the business of such company. Any person who shall make a false statement or false entry in any book of such company or exhibit any false paper with intent to deceive any person authorized to examine into the affairs of such company or shall make a false statement of the financial condition of the company or securities offered by it for sale, shall be deemed guilty of a felony and upon conviction shall be fined not less than $200.00 nor more than $10,000, and shall be imprisoned not less than one nor more than ten years. That any person, agent or company who shall sell or attempt to sell stock bonds, or other security of any company, who have not complied with the provisions of this Act, or any company who shall attempt to do business without having first fulfilled the requirements of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined for each offense not less than $100.00, not more than $5,000.00 or by imprisonment in the County jail for not more than 90 days or both. All fees collected by the Secretary of State from these companies shall be turned over to the Secretary of the

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Treasury, and reappropriated to the Secretary of State to be used in paying salaries and expenses of such persons as he may employ and use in carrying this Act into effect.

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. Acts of Tennessee, 1919, Chapter 126, provide for the removal of the disability of coverture of married women. (See Acknowledgments.)

Corporations. Private corporations, for a variety of purposes embracing every industry, may be formed 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 said county the certificate of registration given by the secretary of state, and a facsimile of the State seal The amount of capital stock cannot be less than $1,000, and may be changed and new powers added by the board of directors under resolution of stockholders authorizing 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. Acts of 1917, Chapter 113, makes the law as to a transfer of shares of stock in a private corporation, chartered, organized and existing under the laws of Tennessee, uniform with the laws of other states. Chapter 56, Acts of Tennessee, 1919, provide that it is not necessary to prove corporate existence, either for a domestic or foreign corporation, unless the same is denied under oath.

Corporations (Foreign). Every foreign corporation desiring to carry on business in Tennessee shall first file in the office of the secretary of state a copy of its charter, and shall file for record in the register's office of each county where said corporation purposes to do business an abstract of its charter. It is unlawful for such corporation to do business in Tennessee without having first complied with this provision, and a failure to do so subjects the offender to a fine of not less than $100 nor more than $500.

By the Acts of 1907, Chapter 434, it is provided that all corporations, both foreign and domestic, doing business in Tennessee, shall, in addition to the foregoing, on or before the first day of July, in each year, file with the secretary of state a written statement signed by its president, or vice-president, attested by its secretary, and sworn to by either, which shall state the name and style of the corporation, its principal office or place of business in the State of its creation, and also in the State of Tennessee, the amount of its capital stock authorized by its charter, the amount of capital stock issued and outstanding, and the names of its principal officers, viz.: The president, vice-president, secretary and treasurer, and a list of its board of directors, and the nature and character of the business in which it is engaged. A penalty is provided for a refusal to comply with the above.

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., to and for recovery of property, and for damages, except for libel and slander, up to $500; upon all notes and upon indorsement of negotiable paper where demand and notice are expressly waived in the instrument, up to $1,000.

Days of Grace. (See Bills and Notes.)

Deeds. Until registered, deeds are not good, except between parties and privies. Lands held by unregistered deeds are subject to debts of both vendor and vendee. Wife must join in deed to convey homestead.

Depositions. May be taken by any judge, notary public, commissioner of Tennessee, justice of the peace, mayor or chief magistrate of a town or city, the clerk of any court, or other person properly commissioned or appointed by the court or clerk, not being interested, or counsel, or related to either of the parties within the sixth degree, computing by the civil law. When taken by a notary public in another state his certificate shall show the date of the commencement and expiration of his commission. The depositions, when complete, shall be enveloped, together with the commission, if any, and all documents which may have been deposed to, sealed, with the commissioner's name written across the seal, and directed to the clerk of the court where the cause is pending, with the title of the cause indorsed thereon, and may be sent by mail, express, or private conveyance. Form of Caption: A. B. vs. C. D. In the....Court,.... County, Tennessee. Deposition of....., witness for plaintiff, (or defendant) in the above case, taken upon notice, (or interrogatories on the. ..day of...., 18..(giving date specified in the notice), at (place specified in the notice), in the presence of plaintiff and defendant (show the fact). The said witness.....aged....., being duly sworn deposed as follows: (here follows deposition). Closing certificate: The foregoing deposition was taken before me, as stated in the caption, and reduced to writing by me (or by witness). And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed them up and delivered them to (or put them in the post-office or express office) without being out of my possession, or altered after they were taken. Given under my hand, this ....day of.....A.D. 18.... (Signature and title.)

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 moities 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 others more remote.

Where 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: (a) If he have brothers or sisters of the paternal line of the half blood, and brothers or sisters of the maternal line also of the half blood then the land shall be inherited by such brothers and sisters on part of the parent from whom the estate came, in the same manner as by brothers and sisters of the whole blood, until the line of such parent is exhausted of the half blood, to the exclusion of the other line. (b) If he have no brothers or sisters, then it shall be inherited by the parent if living, from whom or whose ancestors it came, in preference to the other parent. (c) If both parents be dead, then by the heirs of the parent from whom or whose ancestor it came. 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 widow 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.

Dower. (See Married Women.)

Executions may issue from Justice of the Peace Court after two days and from County Court after ten days, and from all other courts after thirty days from rendition of judgment. Executions from Justice of Peace returnable in thirty days, from Circuit and Chancery Courts to the first day of the next term. 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.

Holidays. January 1st, January 19th (Robert E. Lee's Birthday), February 12 (Lincoln Day), February 22d; Good Friday, May 30th, (Decoration Day, fixed on the 30th day of May by Act of Congress), June 3d (Confederate Decoration Day, or memorial day), July 4th, July 13th (Forrest Day), first Monday in September, known as Labor Day, November 11th (Victory Day), December 25th.

When any of these holidays fall on Sunday the following Monday is to be substituted. Also all days appointed by the governor of this State, or by the President of the United States as days of fasting or thanksgiving, and all days set apart by law for holding County, State, or National elections, throughout this State are made legal holidays, and the period from noon to midnight of each Saturday which is not a holiday, is made a half holiday. On which holidays and half holidays all the public offices of this State may be closed and business of every character, at the option of the parties in interest or managing the same, may be suspended. Bank transactions after 12 o'clock noon on Saturdays are pronounced valid by Ch. 18, Acts of 1919.

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 benfit 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 ante-nuptial 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 cannot 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, and 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 or 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 exempt personal property of husband for benefit of herself and children. Life insurance effected on life of husband, by either husband or wife, this death inures to the benefit of his widow and children, free from claims of his creditors. Married women are under no disability on account of coverture; they can acquire, hold, use and dispose of property, real and personal, contract in reference to it, bind themselves personally and can sue and be sued just as if they were not married.

Interest. Legal rate, 6 per cent. 8 per cent law has been repealed. Contract for more than 6 per cent is void as to excess, and an instrument showing usury on its face cannot 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.

Limitation 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 and sued on in two years, if a resident, and three years if a non-resident after qualification, but no suit can be brought within six months after such qualification. Continuous adverse possession of real estate for seven years, under color of title, makes a title.

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 ninety days after the work is done by him or materials furnished, 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 cannot 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 if equity of redemption not waived 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. See Chapter 140 of Acts of 1917 and Chapter 120, Acts of 1919, which Act regulates and makes uniform the rights, duties and liabilities of a general and limited partner. Limited partnership may be formed for transaction of any mercantile, mechanical, manufacturing, agricultural, or mining business in this State; but not

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

for carrying on business of banking and insurance. The articles of co-partnership, 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. Cannot 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 (6) years from January 10th, of the year for which they accrued, after which they are barred. Payable first Monday in October of the year they are assessed. After the first day of March, following, taxes bear interest, and distress warrants are issued for collections. Under the Acts of 1923, chapter 77, they become delinquent January 1st, following, and bear additional interest, from that date until paid; during the month of January, the Trustee of the County must advertise that additional penalties will accrue on February 1st, and he has from February 1st, to March 1st, to hand a list of delinquents, to an attorney for suit, either in the Chancery Court, or Circuit Court; after the list has been handed to the attorney, an additional penalty of 10 per cent is imposed. The delinquent taxpayer has two years from the date on which the property is sold, by decree of Court, in which to redeem the property by paying taxes, interest, costs, 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 hand 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. Foreign wills may be probated in same manner and form as domestic wills, if properly probated in states where will was made.

SYNOPSIS OF

THE LAWS OF TEXAS

RELATING TO

BANKING AND COMMERCIAL USAGES

Accounts, How Sworn To. Open accounts, for purposes of suit must be itemized and 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 out of the State, but within the United States, or territories, before clerk of some court or 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." Care should be taken to see that matters certified to in a married woman's acknowledgment are strictly followed as a proper acknowledgment and certificate are necessary to render her conveyances valid.

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 estate. Wills may by express provision dispense with administration, other than probating the will and filing of inventory and appraisement, and confer independent administration on the executor. Foreign executors, administrators or guardians are not recognized by the Court of Texas and as such may not transact business in Texas.

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. No alien shall acquire title to or own lands or leaseholds thereon, except as hereinafter stated. Aliens may hold and own personal property to same extent as citizens of United States may hold and own personal property under laws of nation to which particular alien may belong—this law enacted in 1921.

This provision of the law does not apply to land owned in the state by aliens, not acquired in violation of laws of state, so long as held by present owners (1921); nor does it apply to lots or parcels of land owned by aliens in incorporated cities and towns, nor to aliens who are or who shall become bona fide inhabitants of the state, in following instances: (1) Aliens who were bona fide inhabitants of state when law went into effect (1921); (2) Aliens eligible to become citizens of United States and who have declared intention to become citizens; (3) Aliens who are natural born citizens of nations having a common land boundary with United States; (4) Aliens who are citizens or subjects of nation which now permits American citizens to own land in fee in such country; and any resident alien who shall acquire land under provisions of this law shall have five years after he shall cease to be a bona fide inhabitant of Texas in which to alienate land.

Non-resident aliens may acquire land in collection of debt, acquire lien upon real estate, lend money secured by real estate lien, enforce liens against lands, may hold land for five years by whatever source acquired; minor may hold land until five years after majority; lands subject to escheat to the state if law violated.

All aliens owning lands in Texas when law was enacted in 1921, required, on or before, January 1, 1923 to file report under oath with county clerk of county where land located, giving name, age, occupation, personal description, place of birth, last foreign residence and allegiance, date and place of arrival of Alien in United States, and his or her present residence and post office address, length of residence in Texas, foreign government to which alien may at time be subject, number of acres owned by alien in county, name and number of survey where land located, abstract and certificate number, name of person or persons from whom acquired, date acquired, describe land by metes and bounds, or refer to recorded deed in which land is described, and endorse article "Report of Alien Ownership"; and where aliens make purchase of lands after January 23, 1923, same report must be filed within six months after purchase or acquisition of land.

Appeals. (See Courts.)

Arbitration. The statutes provide for arbitration, the award made in such cases, if the proceeding was in compliance with the statute, becomes the judgment of the court in which it is filed. Right of appeal to court having jurisdiction of the amount involved exists only when such right is reserved in the agreement of arbitration.

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. Debtors' property such as is not exempted by law, can be attached on certain statutory grounds of fraud alleged under oath of creditor and bond in double the amount of the debt. Attachment, now, may also issue upon unliquidated demands when the defendant is a non-resident. Bankruptcy has practically suspended use of writs of attachment.

Banks. The constitution of 1876, that prohibited incorporating for state banks, has been amended and legislature of 1905 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 of the act. Also provides for supervision by state by inspection of all corporations under the act. Laws have recently been enacted to encourage State Banks to become members of Federal Reserve Bank System, giving them powers somewhat similar to those given National Banks by such 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 common law 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.

Blue Sky Law. (See Corporation.)

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. By a recent amendment to our statutes relating to chattel mortgages, any chattel mortgage or reservation of title to secure purchase price covering any machinery, or other manufactured article, which is susceptible of being attached to realty in such a manner as it becomes fixture thereto, and is in fact located on such estate real in such a way as to be deemed a fixture and a part of the realty, may be protected and the rights of the mortgagee preserved by the execution of a special form of chattel mortgage, which is to be recorded in the special record in the office of the county clerk, wherein the property is situated. This amendment is somewhat lengthy, in fact, too lengthy to be quoted herein, but should be followed to the letter in order to properly protect the rights of the mortgagee

Collaterals. Holder of claims as collateral security who fails to use due diligence to collect is liable for loss. Is not affected by limitation against the debt. After the death of the debtor the creditor may still collect the collaterals. Surety on principal debt is subrogated to rights of creditors as to collaterals. If, by negligence or design, the creditor loses the collateral, the surety on the principal debt is to that extent discharged. Note pledged as collateral can be held for no other debt. Taking collateral security does not extinguish original contract.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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. A married woman may by decree of Court authorize to convey, etc., where husband refuses to join. (See Acknowledgments.)

Corporations. Before a charter will be granted for a domestic corporation, the full amount of the proposed capital stock must have been in good faith subscribed, and at least 50 per cent thereof paid in in cash, property or labor. Two years from the date of the issuance of the charter is allowed for payment of unpaid subscriptions. Permit must be obtained from the Secretary of State before any person is authorized to solicit subscriptions for the capital stock of any proposed corporation, and such application will be granted and permit issued only on filing of proper bond, which is fixed by graduated scale, according to the amount of the capital stock of the proposed corporation. Promotion fees and other organization expenses are limited to 15 per cent of the stock actually sold. The same limitation as to promotion and organization expenses applies to any foreign corporation desiring to sell stock in this state. A foreign corporation desiring to sell stock in this state must first procure a permit from the Secretary of State, which permit will be issued only upon the execution and filing of a proper bond which is fixed by graduated scale, according to the amount of the capital stock of the foreign corporation, which is to be sold within the State of Texas.

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, Delrio, Dallas, Fort Worth, Abilene, San Angelo, Amarillo, Wichita Falls 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; above $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 above $500 to $1,000, exclusive jurisdiction over amounts above later 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 ten 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. Abolished by adoption of a uniform Negotiable Instrument Act, in 1919.

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 subpœna witness not less than five days before taking deposition, giving notice also of time and place of taking to each of the parties or their attorney of record, and written interrogatories must be propounded sereatim and witness not allowed to be advised of contents of interrogatory until so propounded.

The testimony of witnesses may be taken orally, provided they be within one hundred miles of the court in which the suit is pending. Also, they may be taken orally at points more distant than one hundred miles when the Court may upon application so order it. In taking the deposition, the officer will make a caption stating the number and style of the case, the residence of the witness, the 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. When the same have been so reduced to writing, they shall be signed by the witness, and the officer shall affix his jurat showing that they were sworn to and subscribed before the officer by the witness. In addition, the officer shall attach a certificate under his seal and official signature, showing that the answers of the witness as made were signed and sworn to by the witness before him and that said answers were reduced to writing by him or under his direction. The deposition with the commission and interrogatories must be sealed in an envelope, and the officer's name must be written officially across the seal. The envelope shall be addressed to the Clerk of the Court from which the commission issued, and should have on it the amount of the fee, the number and style of the suit and the name of the witness, and a certificate by the officer under the seal of his office, stating that he in person deposited the same in the U. S. Mail (giving the postoffice) for transmission on the.....day of..... .....19....

Descent and Distribution of Property. Separate, 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. Communuity 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.

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 in suits to which heirs as such or executors, administrators or guardians in their official capacity are parties. (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 at 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 postoffice, 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 month If execution do issue within twelve months another may be issued at any time within ten years, and by so issuing within each succeeding ten years from date of last issuance, a judgment may be continued alive.

Exemptions. By the constitution of 1876, the homestead of a family not in a town or city consists of 200 acres of land, which may be in one or more parcels, with improvements thereon. In a city, town, or village it consists of a lot or lots not to exceed $5.000 in value at the time of their designation as the homestead, exclusive of improvements, provided the same be used as a home, or as a place to exercise the calling or business of the head of a family. The homestead is protected from forced sale or incumbrance except for taxes, or for the purchase money, or for improvements thereon, and in this last case, only when the work and materials are contracted for in writing in advance, with the consent of the wife, given in same manner as required in making a sale of homestead. In case of death of the husband, the widow and children have one year's support from the estate, allowance therefor in no case to exceed $1,000, and if the property exempt by law does not exist in kind, a sufficiency of the estate may be sold for cash, to raise allowance for homestead, not to exceed $5,000, and for other exempt property not to exceed $500. All household and kitchen furniture, all implements of husbandry, all tools and apparatus belonging to any trade or profession, all books, five milch-cows and calves, two yoke of work oxen, two horses and one wagon, one carriage or buggy, twenty hogs, twenty sheep, all provisions and forage on hand for home consumption, current wages for personal services, and sundry other articles, are also exempt property for every family. And to every citizen not the head of a family one horse, bridle and saddle; all wearing apparel; any lot or lots in a cemetery for sepulture; all tools, apparatus, and books belonging to his trade, profession, or private library. Current wages for personal services are not subject to garnishment. Exempt personal property may be made subject to valid liens, by contract.

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. Should a foreign corporation, without procuring permit, do other than interstate business in Texas, it will be denied the right to file suits in State Courts. (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. May issue either before or after judgment to attach moneys due by garnisher to debtor or effects of debtor in hands of garnishee. Except after judgment a bond in double amount of debt must be given. Current wages are exempt from garnishment. The proceeds of the sale of the homestead are exempt for six months.

Guarantee 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 22d, March 2d, April 21st, June 3d, July 4th, first Monday in September, October 12th, November 11th, 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, real or personal, of either spouse owned or claimed before marriage and that acquired afterwards by gift, devise or descent, as also the increase of all lands thus ac-

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

quired, and the rents and resources derived therefrom, shall constitute the separate property of such spouse. All property acquired during coverture by either spouse, except such as is the separate property of the one or the other is community property. During marriage the husband shall have the sole management, control and disposition of his separate property, and the wife the sole management, control and disposition of her separate property, except, however, that the joinder of her husband is any encumbrance or conveyance, of the wife's land shall be necessary and the joint signature of the husband and wife shall be necessary to transfer stocks and bonds belonging to her. The husband shall have control of the community property except the personal earnings of the wife, interest on bonds and notes belonging to her, and dividends on stocks owned by her, which shall be subject to the control, management and disposition of the wife as aforesaid. Funds deposited in any bank or banking institution in the name of either the husband or the wife shall be regarded as belonging to and subject to the control of the party in whose name deposited, regardless of who shall have made the deposit. Neither separate property of the wife nor the rents from the wife's real estate nor interest on bonds and notes belonging to her, nor dividends on stocks owned by her nor her personal earnings, shall be subject to the payment of debts contracted by the husband.

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 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, but new promise which revives debt, and which must be in writing, revives mortgage. Renewals of mortgages or other liens affecting real estate must be recorded to be effective. Limitation must be pleaded. Does not run during period of absence of debtor from State, nor against minors, married women, and persons non compos mentis.

Married Women. By an Act of the Legislature which went into effect July 1, 1913, married women are given certain rights to contract. This act was amended by a later act, which went into effect June 21, 1917. Previous to the former Act, they had no right to contract save for necessaries for themselves or children and for the benefit of their separate estate. These Acts of the Legislature have not yet been considered by the courts and the exact extent of married women's right to contract is not yet known. Contracts made by a married woman may not be enforced against the separate property of the husband nor against the community property other than the personal earnings of the wife save when the contracts are for necessaries furnished her or her children. A married woman shall never be a joint maker of a note or surety on any bond or obligation of another without the joinder of her husband with her in making such contract. A married woman may, on proper application to District Court wherein they reside, have their disabilities of coverture removed for mercantile and trading purposes. The husband must be served with citation or notice of the application, and application will be granted only after proper hearing before the district judge. Until this is done, any person dealing with married women in this state on a credit basis, virtually do so at their own risk. (See also Husband and Wife.)

Mines and Mining. There are statutory provisions as to mineral lands of the State, but too lengthy for the compendium.

Mortgages. No mortgage or other voluntary encumbrance 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 States 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. Attorney's fees may be stipulated for in note and recovered in case of suit. Paper falling due on Sunday, or a holiday, must be presented for payment or acceptance on the day following such holiday.

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. A party sued in a County other than the county of his residence, must claim the privilege to be sued in his own county, other wise the court has jurisdiction to try the case.

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 first 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 may assume banking privileges; can act as trustees, executors and agents.

Warehouse Receipts. Uniform Warehouse Receipts Act was adopted in 1919, and is now in full force. This is an amendment to the Act of 1914.

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

Revised by MESSRS. BOOTH, LEE, BADGER, RICH & RICH, Attorneys at Law, 604-610 Boston Bldg., Salt Lake City.
(See Card in Attorneys' List.)

Actions. There is but one form of civil action and that is prescribed by statute. When required by defendant non-resident plaintiff must give bond for costs.

Administration of Decedents' Estates is had in the district courts. Creditors have two months in which to present claims in estates less than $10,000.00; in larger estates four months. Non-resident creditors may present claims after the expiration of said time and before the estate is closed providing they show that they had no notice or knowledge of said time limit. No notice required when an estate is less than $1,500.00. Claims whether due or not arising from contract not presented within the time limited from notice, forever barred. Suit must be brought upon rejected claims within three months after date of its rejection, if it be then due or within two months after it becomes due. 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 cannot be appointed administrator of his deceased partner's estate.

Affidavits may be taken before any notary public, judge, or clerk of a court of record having a seal. When an affidavit is taken before a judge or clerk out of the State, 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.

Arbitration, in all cases except where the title to real property is involved, may be had in the manner provided for by the code and the award may be entered as a judgment.

Arrest. A judgment creditor may obtain the arrest of an absconding debtor by making the proper showing to the court and furnishing a bond of not less than $500.

Assignments. Any insolvent debtor may make an assignment for the benefit of his creditors and may be with or without preferences, which assignments are administered by the district courts. Amounts owing for rent or wages are preferred by law. Assignment is void for fraud or if it gives a preference upon any condition or contingency.

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 cannot 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, or

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

against a defendant when the plaintiff sets forth facts in his affidavit showing probable cause that he is justly apprehensive of the loss of his claim unless writ of attachment issue.

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 securities in a sum not less than $200 in district court and $50 in justice court and not less than the claim.

Banks.—Corporations to conduct commercial and savings banks, or banks having departments for both classes of business, may be formed by any number of persons, not less than five at least one of whom shall be a resident of this State.

The subscribed capital stock shall not be less than $25,000. In cities having from 5,000 to 25,000 inhabitants, not less than $50,000, and in cities having from 25,000 to 50,000 inhabitants, not less than $75,000, and cities having more than 50,000 inhabitants, not less than $100,000 nor shall the certificate of incorporation be issued, unless it shall appear by affidavit of at least three of the incorporators, that the proposed corporation has the requisite amount of subscribed capital stock, and that at least 50 per cent of the capital stock has been paid in cash. And it must also appear by affidavit that at least 25 per cent of any increased capital has actually been paid in cash. Unpaid subscriptions shall be paid in installments of not less than 10 per cent per month.

Loans to officers and directors in excess of 15 per cent of the capital stock and surplus are prohibited, and the capital stock of the bank shall not be taken as security for such loans. All loans to officers must be secured in double the amount of the loan and must be approved by a two-thirds vote of the directors or executive committee, on which vote, the officer or director securing the loan shall not participate.

The total liabilities of any bank to any person, company, corporation or firm for money borrowed, shall not exceed 15 per cent of the capital stock and surplus.

Stockholders are liable for an additional amount equal to the amount of their stock for all debts.

Savings banks are prohibited from borrowing money (except public moneys) or pledging securities, except to meet immediate demands of depositors, and then only upon a resolution adopted by a majority of the board of directors or executive committee, duly entered in their minutes with the ayes and nays recorded.

The establishment or maintenance of private or partnership banks are prohibited

Foreign banks are required to comply with all provisions of law relating to private corporations and domestic banks, including the payment of capital stock in this State.

Commercial banks are required to maintain a reserve fund equal to 15 per cent of deposit and demand liabilities. one-eighth in lawful money of the United States on hand and the balance in credits in solvent banks, other than savings banks.

In cities having a population of 50,000 or more, the reserves shall be not less than 20 per cent.

Savings banks must carry in cash or equivalent 10 per cent of its deposit liabilities, one-fourth of which must be in lawful money, and the remainder in credits in solvent banks other than savings banks.

Banks having both commercial and savings departments are required to maintain reserves for each department.

A director must own stock of the par value of at least $200 in his own right. In cities of the first and second class, the stock owned by directors must be of the par value of $500.

The board of directors or a committee thereof of not less than three members shall at least once in three months examine the loans and investments made since the last meeting.

A thorough yearly examination oi the affairs of the bank with a special view to ascertaining the value and security of loans, discounts and overdrafts is required, and a report made to the state bank examiner.

One-tenth of net profits shall be carried to a surplus fund until such fund amounts to 20 per cent of the capital stock.

Bank commissioner, if he is satisfied bank has violated the law, may take possession of the books and assets of the bank, and wind up the affairs of the bank.

Upon payment of creditors, and the expenses of administration and the making good of the impairment of the capital stock, the property of the bank shall be returned to the bank or to the stockholders.

The bank commissioner shall approve of articles for the incorporation of banks.

Bills of Lading. The law merchant governs in cases of Bills of Lading.

Blue Sky Law. Every person, firm or corporation engaged in the business within the State of Utah of selling or negotiating for sale various kinds of securities, issued by him or it is defined as an investment company and is required before selling or offering for sale or exchange within the State of Utah, of such securities to file under oath upon forms prescribed by the Securities Commission, a statement containing detailed information with reference to the business of the investment company and to pay a fee in the amount of one-tenth of 1 per cent of the face value of the securities not exceeding $25. If a foreign investment company, it is required to appoint a domestic process agent licensed for a period of one year, which agent is required to pay an annual license fee of $5.00. Every investment company is required to make an annual report setting forth the condition of the company. There are many kinds of securities excepted from operation of the act, and persons interested should consult the 1925 Session Laws to ascertain the exceptions.

Every person or corporation selling or offering for sale securities issued by any other person or corporation is defined as a dealer and is required to pay a license fee of $10 and to deliver to the Commission a bond of $5,000 conditioned upon the faithful compliance of the provisions of law and available to any person who may suffer loss by reason of non-compliance. Dealers are required to keep books of account. The commission is given power to suspend the license of any dealer who is insolvent or is doing business in violation of any of the provisions of the act. Any person who knowingly makes or publishes any statement concerning the financial condition or property of any corporation or company which shall contain a false or wilfully exaggerated statement or which is intended to give or shall have a tendency to give a less or greater value to securities or property of any person or corporation shall be deemed guilty of a felony.

Bucketing contracts are defined and are declared a felony. Any contracts of sale in violation of the terms of the law are declared unlawful and every agent of any investment company or dealer guilty of an unlawful sale is liable to the purchaser of securities in a civil action for the purchase price paid and all damages without proof of actual or constructive fraud.

Bulk Sale's Act. The Bulk Sale's Act passed by the legislature 1923, brings within the Bulk Sales Law not only merchandise in bulk, but any portion of the property, furniture, fixtures, equipment or supplies of a hotel, restaurant, barber shop or any place of business wherein the furniture or equipment are used in carrying on said business, the sale to be void unless creditors are notified at least five days previous thereto.

Collateral. There are no statutory provisions peculiar to this subject.

Collection Agencies are required to give bond for faithful performance of contracts.

Competition (Unfair). Unfair competition, i. e., cutting of prices to destroy competitor is prohibited.

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 cannot 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.

Conveyances. The statute gives the following forms:

WARRANTY DEED

A. B., grantor (here insert name or names and place of residence), hereby conveys and warrants to C. D., grantee (here insert name or names and place of residence), for the sum of.....dollars, the following described tract.....of land in.....County, Utah (here describe the premises).

Witness the hand of said grantor this.....day of..... A. D. 19....

Such deed has the effect of a conveyance in fee simple to the grantee, his heirs, and assigns, of the premises therein named, together with all the appurtenances, rights, and privileges thereto belonging, with covenants from the grantor, his heirs, and personal representatives, that he is lawfully seized of the premises; that he has good right to convey the same; that he guarantees the grantee, his heirs, and assigns in the quiet possession thereof; that the premises are free from all incumbrances; and that the grantor, his heirs, and personal representatives will forever warrant and defend the title thereof in the grantee, his heirs, and assigns, against all lawful claims whatsoever. Any exceptions to such covenants may be briefly inserted in such deed following the description of the land.

QUIT-CLAIM LAND

A. B., grantor (here insert name or names and place of residence), hereby quitclaims to C. D., grantee (here insert name or names and place of residence), for the sum of.....dollars, the following described tract.....of land in.....County, Utah, here describe the premises).

Witness the hand of said grantor this.....day of..... A. D. 19....

And such deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described, and all rights, privileges, and appurtenances thereto belonging at the date of such conveyance.

MORTGAGE

A. B., mortgagor (here insert name or names and place of residence), hereby mortgages to C. D., mortgagee (here insert name or names and place of residence), for the sum of.....dollars, the following described tract.....of land.....in.....County, Utah (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amounts and form of indebtedness, maturity, rate of interest, by and to whom payable, and where).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of.....dollars attorney's fee in case of foreclosure.

Witness the hand of said mortgagor this.....day of..... A. D. 19....

And when executed as required by law, shall have the effect of a conveyance of the land therein described, together with all the rights, privileges, and appurtenances thereunto belonging, to the mortgagee, his heirs, assigns, and legal representatives, for the payment of the indebtedness therein set forth, with covenant from the mortgagor that all taxes and assessments levied and assessed pon the land described, during the continuance of the mortgage, shall be paid previous to the day appointed for the sale of such lands for taxes, and may be foreclosed as provided by law and with the same effect, upon any default, being made in any of the conditions thereof as to payment of either principal, interest, taxes, or assessments.

Statutory forms of acknowledgment are as follows:

PERSONAL
Where grantor is known:

State of Utah, County of.....

On the.....day of....., A. D. 19....., personally appeared before me, A. B., the signer of the above instrument, who duly acknowledged to me that he executed the same.

PERSONAL
Where grantor is unknown:

State of Utah, County of.....

On this.....day of....., A. D. 19....., personally appeared before me, A. B., satisfactorily proved to me to be the signer of the above instrument by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same.

CORPORATE

State of Utah, County of.....

On the.....day of....., A. D. 19....., personally appeared before me A. B., who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent, as the case may be) of (naming the corporation), and that said instrument was signed in behalf of said corporation by authority of its by-laws (or by resolution of its board of directors, as the case may be), and said A. B. acknowledged to me that said corporation executed the same.

To operate as notice to third parties, a deed must be recorded at the office of the county recorder in which the property is situated; but is binding between the parties and to all others who have notice without record.

Powers of attorney affecting real property must be acknowledged and recorded as deeds, and revocation, to be effectual, must be recorded.

The use of a private seal is unnecessary.

Witnesses are not required.

Corporations may be formed by any number of persons, not less than five, one of whom must be a resident of this State. They shall enter into an agreement in writing, which agreement must contain certain statutory provisions and such other matters as may be agreed upon by the incorporators. Shares of stock may be without nominal or par value. At least three of the incorporators must subscribe to an affidavit before a notary public of the county wherein they intend to establish their principal place of business, to the effect that they intend to carry on the business mentioned in the agreement and that each party has paid or is able to pay the amount of his subscription. That at least 10 per cent of the capital stock subscribed by each stockholder and not less than 10 per cent of the capital stock of the corporation has been paid in, affidavit not required in case of corporation without par value to its stock or any class thereof, nor in any water users association organized in accordance with the rebuirements of the reclamation act, to furnish water only to its stockholders. The stock can be paid for in property, in which case the property must be described in the agreement, and except in case of corporation 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 for which it was accepted by the corporation. The agreement and oath must be filed with the clerk of the county in which the general business is to be carried on and a copy must be filed with the secretary of state. The officers must subscribe to an oath of office which must be filed with the county clerk. Corporations so formed have general powers. A corporation is allowed to continue its existence the period provided in the charter for the purpose of winding up its business.

A corporation annual license tax is levied on capital stock, graduated from a minimum tax of $5.00 for an authorized capital stock of $10,000 of less, to a maximum tax of $750.00 for an authorized capital stock of over $4,000,000.

or FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

The foregoing tax is due on the 15th day of November of each year. If not paid before the 15th day of December following, the corporation is in default and a penalty of $10 is imposed; if the tax and penalty is not paid on or before the first Monday in April following, the right to do business within the State of Utah is forfeited. On or before the first day of July following the first Monday in April the governor may reinstate any defaulting corporation paying all back taxes, penalties and expenses. Any corporation required by law to make a report or to pay the corporatiom license tax in this State which transacts business in this State without having first made its report or without having first paid all corporation license taxes or if the report filed by such corporation is found to be false; shall for such offense forfeit to the State a sum not less than $200.00 and not more than $500.00.

If the default of any corporation results from mistake, inadvertence or excusable neglect by its officers, the Governor upon good cause shown is authorized to reinstate such corporation any time within seven years from the entry of default, provided such defaulting corporation pay all taxes, penalty costs and expenses incurred by the State.

Every domestic corporation, except insurance companies and except as herein stated, at the time of filing its articles of incorporation, and at the time of filing each and all amendments thereto; and all foreign corporations, except insurance corporations, at the time of filing a certified copy of its articles, and at the time of filing each and all amendments thereto; shall make and file with said county clerk of the county in which is the principal place of business of said corporation a report in writing, verified by two of its principal officers, in which it shall distinctly set forth the amount and proportion of its capital stock represented or to be represented by its property and business in Utah; a duly certified copy of which said report shall be filed with the secretary of state together with a certified copy of the articles of incorporation of said company. And said corporation shall at the time of filing said articles and said report, pay to the secretary of state a fee of twenty-five cents on each one thousand dollars, or fractional part thereof of that proportion of its capital stock represented or to be represented by its property and business so set aside for the transaction of its business in Utah, together with an additional fee of five follars as a fee for the issuing the license authorizing it to do business in the State. Every corporation, except insurance companies and except as hereinafter stated, both domestic and foreign, shall within sixty days after the first day of January of each year make the file with the county clerk of the county in which it has its principal place of business in this state, a statement or report showing the amount of the capital stock of said corporation and the proportion of said capital stock represented by its property and business in Utah, which said statement and report shall be verified by two of the principal officers of said corporation. Said corporation shall, within ten days thereafter, file with the secretary of state a copy of said statement and report duly certified by the county clerk of said county. If there is any increase in the amount or proportion of the capital stock of said corporation represented by its property and business set aside for, or used, or to be used for the transaction of its business in Utah, the said corporation shall at the time of filing said report pay to the secretary of state a further fee of twenty-five cents on each one thousand dollars or fractional part thereof of such increase of that proportion of its capital stock represented by its property and business so set aside for the transaction of its business in Utah. No report shall be required and no fee shall be charged for filing certified copies of articles of incorporation of corporations organized not for pecuniary profit, nor for canal or irrigation corporations engaged exclusively in furnishing water for lands owned by the members thereof; nor for filing certified copies of articles of incorporation of any water users' association which is organized in conformity with the requirements of the United States under the reclamation act of June 17, 1902, and which, under its articles of incorporation, is authorized to furnish water only to its stockholders.

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 corporation failing to comply with these provisions shall not be entitled to the benefits of the laws of this State relating to corporations, and shall not sue, prosecute, or maintain any action, suit, counterclaim, cross-complaint, or proceeding in any of the courts of this State; on any claim, interest or demand arising, or growing out of or founded on any contract, agreement or transaction made or entered into in this State by such corporation or by its assignor, or by any person from, through or under whom it derives its interest or title or any part thereof, and shall not take, acquire or hold title, possession or ownership of property, real, personal or mixed, within this State; and every contract, agreement and transaction whatsoever, made or entered into by or on behalf of any such corporation, within this State, or to be executed or performed within this State, shall be wholly void on behalf of such corporation and its assignees and every person deriving any interest or title therefrom, but shall be valid and enforcible against such corporation, assignee and person. 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. Foreign corporations are granted powers of eminent domain on same conditions as domestic corporations. (See Corporations for License Tax.)

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

Courts. District courts have original jurisdiction in all matters of law and equity and in all matters of probate, and hold three or more terms a year in each county. Provision is made for city courts in the larger cities, and in Salt Lake City the city court has civil jurisdiction in cases where the amount involved does not exceed $1000. Justice of the peace courts have jurisdiction where the amount involved is less than $300.

Depositions may be taken upon oral interrogatories upon written notice to the adverse party, specifying the time and place of taking such depositions, the name and official character of the person before whom such depositions are to be taken, 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 200 miles intervening between the place of trial and the place of taking such depositions. The statute also provides a method of taking depositions on written interrogatories and commission issued out of the court.

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.]

Descent and Distribution of Deceased. The surviving husband or wife of any deceased person or if no husband or wife living then the children may without letters of administration collect any bank deposit left by the deceased not to exced Three Hundred ($300.00) Dollars provided the value of all the property of deceased does not exceed Fifteen Hundred ($1,500.00) Dollars.

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.)

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, except hypothicated certificates of water stock, 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; 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 macnine, all family hanging pictures, oil paintings, and drawings, portraits and their necessary frames; all carpets in use; provisions actually provided for individual or family use sufficient for three months; two cows, with their sucking calves; two hogs, with all sucking pigs; all wearing apparel of every person or family; also all beds and bedding of every person or family. Provided, that if the judgment debtor be the head of a family consisting of five or more members, there shall be a further exemption of two cows and their sucking calves. The farming utensils or implements of husbandry of a farmer not exceeding in value the sum of $300; also two oxen or two horses, or two mules and their harness, one cart or wagon, and food for such oxen, horses, cows or mules for six months; also all seed, grain, or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of $200; crops, whether growing or harvested, and the proceeds thereof not exceeding in value $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 porfessional 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 equipment 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 $2.00 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 $2,000 for himself and the further sum of $750 for his wife (if he has one), and $300 additional for each other member of his family.

False Statements for Credit. False statements to procure credit are made misdemeanor.

Fiduciaries Act. The uniform Fiduciaries Act was passed by the Legislature of 1925. In effect May 12th, 1925. The provision of this act does not apply to transactions taking place prior to the time that the act takes effect.

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.)

Fraudulence Conveyance. The uniform Fraudulent Conveyance Act is in force in Utah, as passed by the Legislature of 1925.

Garnishment. 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 rely. 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.

It is further provided that upon the commencement of any personal action, arising upon a contract express or implied or upon any judgment or decree already obtained, or at any time thereafter, the plaintiff may obtain a writ of garnishment by making and filing with the justice of the peace in a justice court or with the clerk of the court in which said action was brought an affidavit stating that he has good reason to believe and does believe that any certain person, firm or corporation, private or public, has property, money, goods, chattels, credits or effect in his or its hands or under his or its control belonging to the defendant or defendants, or any or either of them, or that such person, or persons, firm or corporation is indebted to the defendant; that the defendant is indebted to him or it on such contract, judgment or decree, sued upon, and that he is justly apprehensive of the loss of the same unless writ of garnishment issue. The garnishee thereupon is liable to the plaintiff from the time of the service of such writ to the amount of the aforesaid property or indebtedness belonging or due to the defendant and shall make answer to the writ as provided by law; but any indebtedness owing to a defendant not personally served in this State with summons, when such indebtedness arises and is payable outside the State, shall not be subject to attachment, garnishment or execution, except in cases where the plaintiff sues in his own right and not as an assignee; but in such cases these facts must affirmatively appear by affidavit, filed as herein provided. It such facts do not appear then the garnishee shall be under no liability on account of such writ of attachment or garnishment. Where the indebtedness arises outside of the State the presumption is that it is payable outside of the State.

Before issuing said writ of garnishment, the justice or the clerk must require a written undertaking on the part of the plaintiff, with sufficient sureties, in a sum not less than double the amount claimed by the plaintiff, but in no case shall the undertaking required exceed $10,000 or be less than $50 in amount. The condition of said undertaking shall be to the effect that if the defendant recover judgment, or if a writ of garnishment be wrongfully issued, the plaintiff will pay the defendants all costs that may be awarded to the defendants, and all damages, which he may sustain by reason of the issuance of the said writ of garnishment, not exceeding the sum specified in the undertaking.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

If the defendant is a non-resident of the state said fact must be set forth in the affidavit.

Holidays. Every Sunday, New Year's Day, February 12th, February 22d, April 15th, May 30th, July 4th, July 24th, First Monday in September, October 12th, November 11, December 25th, and all days which may be set apart by the president of the United States or the governor of Utah, by proclamation. When any of the above, except the first mentioned falls on Sunday, the following Monday shall be the holiday.

Husband and Wife. If sued together, she may defend for her own right, and if either neglect the other may defend for both. If he desert her, she may prosecute or defend in her name. She may convey and make contracts in regard to her separate property the same as if unmarried. Either may act as attorney in fact for the other and conveyances from one to the other are valid. She may maintain an action for wages in her own name. They may be sued jointly for the expenses of the family and for the education of the children.

Inheritance Tax. There is an inheritance tax of 3 per cent on all property in excess of $10,000 and not exceeding $25,000, and 5 per cent in excess of $25,000. Applies not only to inheritance strictly speaking, but also to gifts made in contemplation of death and to grants intended to take effect in possession or enjoyment at or after the death of donor or grantor, whether in trust or otherwise.

Interest. Legal rate, 8 per cent. Maximum rate, 12 per cent. On sums of $100 or less $1.00 may be charged the first month, but no higher rate than 12 per cent thereafter. The debtor, or his representative, can recover all sums paid as principal or interest on usurious loans, if suit is brought within one year. The county superintendent of schools can recover within three years, after the expiration of the first year of the period of limitation, for the use of the schools, all amounts paid as principal or interest on usurious loans.

Judgment. Courts of record within their jurisdiction have power to make declaratory judgments and to declare rights, fix status and determine other legal relations whether or not further relief is or could be claimed and such judgments may be either affirmative or negative in form.

Leases. Leases and contracts of sale or agreements to sell in which the title is retained in the vendor until the purchase price is paid in whole or in part, of live stock above a given number must be recorded in the county where the lessee, or purchaser of the property, as the case may be, resides, that is to say: twenty-five horses, twenty-five cattle, or one hundred sheep.

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 within five months next preceding such seizure and transfer and not exceeding the sum of $400 shall be treated as preferred, and such laborers and employes shall have a lien upon the property for the amount of such debt. This preference does not apply to any officer or general manager of a corporation or any member of any partnership or association. Lessor shall have a lien for rent due for six months only next preceding 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 encumbrance 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 the furnishing of the last labor or material, or in the case of the original contractor within twelve months after completion of the original contract or suspension of work thereunder for thirty days. Persons entering into contracts for the construction or repair of public buildings, public work or improvement are required to give a bond for the protection of persons furnishing labor and material.

Limitation of Actions. Within four 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 six 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.

Mines and Mining. The general principles of the 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.

Mortgages (See Chattel Mortgages. For form Real Property mortgage see Conveyances) 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 and the mortgage, or copy thereof, certified to as such by a notary public or other officer authorized to take acknowledgments, be filed in the office of the recorder of the county where the mortgagor resides, or, in case he is a non-resident of Utah, in the office of the recorder of the county or counties where the property may be at the time of the execution of the mortgage.

Notes and Bills of Exchange are governed by statute. Chapter 83 of the Laws of 1899, effective July 1, 1899, is the act recommended by the American Bar Association to secure a uniform law on this subject. All other acts are repealed. The law merchant governs in cases not provided for. This statute of 1899 is substantially the same as the act of New York relating to negotiable instruments. (See Holidays.) Issuing check without funds or credit is a misdemeanor.

Partnership (assumed name). Persons conducting business under assumed name are required to file affidavit with the county clerk giving true names of persons interested.

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.

Replevin. Personal property may be replevined by the owner or other persons entitled to the possession of it. The necessary affidavit and complaint must be made and filed and also bond in double the value of the property claimed. The defendant can retain possession by giving like security.

Sales. Uniform Sales Act adopted by 1917 Legislature and is now in force.

Statute of Frauds. The following agreements are void unless the agreement or some note or memorandum thereof be in writing and subscribed by the party to be charged therewith:

1. Every agreement that by its terms is not to be performed within one year from the making thereof.
2. Every 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.

4. Every special promise made by an executor or administrator to answer damages or to pay the debts of the testator or intestate out of his own estate.
5. Every agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.
6. Contracts for the sale of goods for $200 or over, unless the buyer shall accept and receive part of such goods or pay some part of the purchase price.

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 $25,000 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 of wife surviving takes one-third of the estate of the other in fee.

Suits. (See Actions.)

Taxes are levied as of the second Monday of January; due on the first Monday of September and become delinquent on the 15th day of November. If taxes on real property are not paid, such property may be sold on or after the third Monday of December and may be redeemed at any time within four years.

Warehouse Receipts. The uniform warehouse receipts Act recommended by the national commission on uniform legislation, was adopted by the legislative session of 1911.

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

Revised by THERIAULT & HUNT. Attorneys at Law, 43 State, Street, Montpelier.
(See Card in Attorneys' List.)

Acknowledgments. All deeds must be signed and sealed in the presence of two witnesses. The seal shall consist of a wafer, wax, paper or other adhesive substance affixed thereto, or the word "seal" or the letters "L. S." opposite the signature. 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 as take acknowledgments of deeds. A stockholder, officer or employee of a corporation who is legally qualified to take acknowledgments may take acknowledgments to an instrument in which such corporation is a party.

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. Appeal may be had to the county court, or when only a question of law is involved direct to the supreme court.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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 $20 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 ro 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, but workmen's wages are exempt up to the amount of $10.

Banks. Savings Banks, Savings Institutions, and Trust Companies are organized under special charters granted by the general assembly, and under the general incorporation act, 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 a bank, before entering upon the duties of his office, shall execute to such corporation a bond approved by a majority of the trustees and the bank commissioner, conditioned for the faithful discharge of his duties. Such bond shall not be less than $10,000; and when the deposits of such corporation, including its capital, if any, and surplus, exceed the sum of $100,000, the penal sum of such bond shall be increased $2,000 for each additional sum of $100,000 or fractional part thereof, but shall not exceed $100,000.

The investments of banks are regulated by laws which are explicit and comprehensive.

A bank may deposit on call in banking associations or trust companies, approved by the bank commissioner of this State and under the supervision of the state or federal authority, in this State or in the cities of New York, Boston, Chicago, Albany, Philadelphia, or Concord, New Hampshire, or in any other bank designated as a 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 depositing banks.

A national bank may act in all trust capacities in the same manner and subject to the same control by the court having jurisdiction, as a natural person legally qualified.

Every bank shall annually, on or before the 15th day of July, make a report to the bank commissioner, showing accurately the condition thereof as it was at the close of business on the 30th day of June preceding; and such report shall embrace the following particulars: Name of corporation; place where located; amount of deposits; amount of individual deposits in excess of $2,000; total number of depositors; number of depositors resident in this State and the total amount of their deposits; number of depositors not resident in this State and the total amount of their deposits; amount of capital, if any; amount of each item of other liability; public funds, including United States, state, county, town and other municipal bonds, stating each particular kind, the par value, estimated market value, and amount invested in each; bank stock, stating name and location of bank, number of shares, par value, estimated market value, and amount invested in each; railroad bonds, stating name of railroad, par value, estimated market value, and amount invested in each; other stocks, stating the amount of each; estimated value, date acquired, description and location of real estate, and amount invested in each property; loans on mortgages of real estate, stating amount in each State, with average rate of interest thereon by states where loans are made bearing more than 6 per cent interest and with special description of each loan in foreclosure or on which there is interest more than one year overdue, giving date of each such loan, date due, amount of principal unpaid, rate of interest, amount of interest due and accrued, value of land mortgaged and of buildings, amount of insurance held by bank; loans to counties, cities, towns, villages, or school districts; loans on personal security; loans on collateral security; cash on deposit in banks or trust companies, with the name thereof and the amount deposited in each; cash on hand; the rate and amount of each semi-annual interest payment on deposits and dividends on stock for the past year; the amount of the treasurer's bond; the amount of taxes paid during the past year to the United States and to this State; the salaries paid officers, trustees, and employees; the other expenses of the past year; with such other information as the bank commissioner may require to obtain an accurate exhibit of the condition, affairs, and transactions of the bank

The treasurer of each bank shall, on or before the first day of May, annually, report to the bank commissioner, under oath, the name and last known residence of each depositor of the bank, together with the amount due such depositor, who has not made a deposit therein or withdrawn any part of his deposit or of the interest thereon, for a period of twenty years next preceding; and who is not known to the officers of the bank to be living; and said treasurer shall further give notice by publishing a list of such depositors in one or more newspapers published in or near the town where such institution is located, three weeks successively. Said bank commissioner shall forthwith forward to the state's attorney of each county a copy of the report received from such treasurers of the banks within such county, who shall forthwith file with the probate court of a probate district in such county an application asking such probate court to cite before it such banks in order to determine the ownership of such deposits. Said probate court shall forthwith give notice in the manner provided in section three thousand, two hundred and ninety-one of the General Laws, notifying all claimants of such deposits to appear and be heard upon the day fixed by said probate court, and shall also, forthwith notify such banks by registered mail of the time and place of such hearing. If said probate court, upon hearing all parties in interest, finds an owner for such deposit, it shall make a decree to that effect which shall be filed with such bank and shall be a sufficient warrant for the payment by the bank to the claimant. If the probate court does not find an owner for such deposit upon the evidence presented, it shall order the bank to pay such deposit to the treasurer of the State to be held and invested as a part of the permanent school fund and shall so certify to the bank, which shall thereupon pay over such deposit, as provided in this section.

The law also provides a method whereby anyone rightfully entitled to such money may obtain same from the state.

The bank commissioner shall semi-annually, without previous notice, visit and examine the condition and affairs of every bank, and oftener if he deems it necessary or believes the interest and safety of the depositors or creditors require. He shall be given access to all the files, books, accounts, securities, and assets of the bank, and shall be afforded every reasonable facility for making an examination of its affairs. He may examine, upon oath, the officers, agents, and servants of such bank or any other person, in relation to the affairs and condition of such institution, and may administer oaths for that purpose. In addition to the examinations required to be made by law, said commissioner shall make such examinations when ordered so to do by a court of competent jurisdiction. Said commissioner may cause an examination of a bank to be made by an expert under his direction but at the expense of such bank.

When the treasurer of a bank is an officer of a national bank or banking association, or the business of a bank is carried on in the same office or building with a national banking association, said commissioner shall, at least once in each year, visit and inspect the condition of such bank, at the same time that the United States bank examiner visits and examines such national banking association.

Every bank shall at all times carry as a reserve 15 per cent of its commercial deposits and 3 per cent of its savings deposits.

Not less than three-fifths of such reserve shall be in cash on hand and in balances payable on demand in banks and national banking associations in which banks of this State are authorized by law to make deposits, and at least one-third of said three-fifths shall be in cash on hand, but balances payable on demand in banks or national banking associations in the same county will be accepted as and in lieu of cash to the amount of one-half of such cash requirement.

Two-fifths of such reserve may be in United States or state bonds or in the bonds of any city of the United States of at least 200,000 inhabitants, according to the last preceding United States census.

No new loans may be made when a bank's reserve is not in accord with the requirements of this section.

The trustees shall have the general management of the affairs of the bank, but they may act through committees of investment, examination, and audit, subject to their general supervision and control.

A regular meeting of the board of trustees of a bank shall be held at least once each month to receive the report of its treasurer and for the transaction of other business. A majority of the trustees shall constitute a quorum, but a less number may adjourn from time to time or until the next regular meeting.

A trustee or other officer of a bank who intentionally violates a provision of this act shall be imprisoned not more than ten years or fined not more than $10,000, or both; and the state's attorney for the county in which such corporation is located shall prosecute such violation on complaint thereof by the bank commissioner.

A trustee or officer of a savings bank shall not, directly or indirectly, either for himself or as the partner of others, borrow or use its funds or deposits, or sign any note, as surety, upon which any of such deposits are loaned.

A savings bank shall, immediately before making each interest payment to savings depositors, reserve from the net profits accumulated since the preceding interest payment, not less than one-eighth of one per cent of the average amount of deposits during such period, as a surplus fund until such fund amounts to 10 per cent of the amount of deposits and other liabilities except surplus. The accumulation toward such fund shall be set aside and held intact and, when the fund amounts to said 10 per cent, it shall thereafter be maintained and held to meet losses in its business from depreciation and securities or otherwise; and, if at any time it falls below said 10 per cent, reservations from net profits shall in like manner be renewed until such fund again reaches the 10 per cent requirement.

A savings bank may pay interest on deposits not to exceed one and three-fourths per cent semi-annually until one-half of the 10 per cent fund described in the preceding section shall be accumulated, after which, so long as said accumulation does not fall below one-half of said 10 per cent fund, the rate may be not to exceed 2 per cent semi-annually until said 10 per cent fund is accumulated. The trustees, so long only as said surplus fund equals or exceeds said 10 per cent, may declare and pay such interest on deposits as in their judgment the earnings and resources of the corporation, above such surplus fund, warrant.

In determining the percent of the surplus fund held by a bank, its interest or dividend paying stocks and bonds, and its real estate shall be estimated at their market value, and its notes and mortgages shall be estimated at their face.

No loan shall be made to an officer, director, or employee of any trust company without the written consent of a majority of the directors; and such loan shall not at any one 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 employee negotiating the same to an amount not exceeding $10,000 or a loan upon the pledge of any of the securities which are legal investments and subject to the restrictions thereof to an amount not exceeding the same sum, shall not be prohibited by this section, but no loan shall be made by such corporation upon its own stock as collateral, and no officers, director or employee of a trust company shall become surety on any note held by such trust company.

A Bank or Trust Company organized under the laws of the State shall have the power to subscribe to the capital stock and become a member of a Federal Reserve Bank subject to the supervision, and examination required by the laws of the State except that the Federal Reserve Bank shall have the right, if it deems necessary, to make examinations.

Bills and Notes. On February 13, 1913, the Uniform Negotiable Instruments law went into effect.

Chattel Mortgages. All personal property is subject to mortgage. A mortgage of personal property shall not be valid against any person except the mortgagor, his executors and administrators, unless at the time of making such mortgage the possession of the property is delivered to, and actually retained by the mortgagee, or the mortgage is recorded in the office of the clerk of the town in which the mortgagor at the time of making the same resides or, if he resides out of the state, in the town in which the property is situated. When the condition of a chattel mortgage has been fulfilled, the mortgagee shall within thirty days thereafter cause said mortgage to be discharged of record and if he refuses or neglects to do so shall be fined not more than fifty nor less than five dollars. Mortgagor and mortgagee are required to subscribe to an affidavit that the debt secured is a just one, honestly due and owing from the mortgagor to the mortgagee, 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 three or more persons, by application to the secretary of state, for any purpose not repugnant to the laws of this state except (1) any business subject to regulation by the Public Service Commission; (2) the business of a bank, or trust company or savings bank, or any business contemplating the receipt or holding of money on deposit, or letting, loaning or managing money deposited; and (3) the business of insurance. Not less than twenty-five persons, a majority being inhabitants of the State, may from a railroad corporation under the general law. Any corporation, by a two-thirds vote of all its stockholders, or, if it has no capital stock, by a two-thirds vote of all members present, or, if such corporation has not been organized, by a two-thirds vote of the surviving signers of the articles of association, at a meeting duly called for, the purpose may alter, add to or change the business for the transaction of which it was incorporated. (See Sec. 21 of Gen. Ins. Act.)

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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 then the fees specified above. Charter fee must be paid with application for charter, and if charter is refused money is refunded.

A corporation may own shares of stock in any domestic corporation provided that the principal business of such domestic corporation is ancillary and auxiliary to its business or that it holds such stock for purposes ancillary and auxiliary to its business. A corporation may also own shares of stock in any corporation organized under the laws of any other jurisdiction, if the principal business of such foreign corporation is to handle and develop in that jurisdiction the business of the domestic corporation. Any charitable, religious or educational corporation may accept and hold shares of stock in any corporation given to it by will or otherwise.

No corporation whose business is primarily to hold shares of stock in other corporations, commonly called "a holding company," shall be permitted to acquire or hold such stock in other corporations. A violation of this provision shall be a cause for the dissolution of the corporation

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 warranto; and may try and determine questions of law removed from the county court upon bills of exception. 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. There are also inferior courts; municipal and city courts, juvenile courts, and justice courts.

Days of Grace. None.

Descent and Distribution. The real and personal estate of a deceased person, not devised nor bequeathed and not otherwise appropriated and distributed in pursuance of law, descends in the following manner:

1. In equal shares to the children of the deceased person, or the legal representatives of deceased children.
2. If the deceased is a married person and leaves no issue, the surviving husband or wife, as the case may be, takes the whole of the deceased's estate if it does not exceed $4,000; if it exceeds that sum, then the survivor is entitled to $4,000 and half the remainder, and the remaining part of the estate descends as the whole would if the husband or wife did not survive. If deceased has no kindred who may inherit the estate, the surviving husband or wife is entitled to the whole estate.
3. If deceased person leaves no issue, nor surviving husband or wife, the estate descends in equal shares to the father and mother of the deceased person. If the mother is not living, the estate descends to the father. If the father is not living and the mother survives, the estate descends to the mother.
4. If the deceased person leaves no issue, nor wife, nor husband, nor father, nor mother, the estate descends in equal shares to the brothers and sisters of the deceased person and to the legal representatives of deceased brothers and sisters.
5. If none of the relatives above named survive the deceased, the estate descends in equal shares to the next of kin in equal degree; but a person is not entitled, by right of representation, to the share of such next of kin who has died.

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.

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. If there are no children, widow is entitled to the first $4,000, and one-half the balance of husband's estate.

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, $1,000; necessary wearing apparel, household furniture and tools, one sewing machine, 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. (See Attachment.)

Holidays. First day of January, the 4th day of July, the 16th day of August, the 30th day of May, the 25th day of December, the 22nd of February, and any day appointed by the Governor or by the President as a day of fast or thanksgiving, are legal holidays. Also first Monday in September, and the 12th day of October (Columbus Day).

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 martial 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 Women. 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. A married woman shall not become surety for her husband's debts except by way of mortgage, but she may convey or mortgage by her separate deed the real estate of which she is seized in her own right to her sole and separate use as she might do by her separate deed, if unmarried. A married woman may, by her sole deed, convey or mortgage and may manage and control any other real estate hereafter acquired by her except that a homestead interest therein and the real estate of which she is seized jointly with her husband may be conveyed or mortgaged only by the joint deed of herself and husband. 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, incomes, 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—Divorces.)

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. On February 13, 1913, the uniform Negotiable Instruments Law went into effect.

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

Acknowledgments. The certificate must be to the following effect:

State (territory, or district) of.....

County (or corporation) of.....To wit:

I.....(Title of Officer), in and for the county (or corporation) of.....in the state (territory, or district) of....., do hereby certify that.....whose name is signed to the writing above (or hereto annexed), bearing date on the.....day of....., has acknowledged the same before me in my county (or corporation) aforesaid.

Given under my hand this.....day of.....

.....

(Title of Officer)

(Notary must give the date at which his commission expires.)

The clerk of the 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, or upon a certificate of his acknowledgment before the said clerk, or before the clerk of any court of record in this State or before the clerk of any court out of this State, but within the United States, or before a justice, a commissioner in chancery of a court of record or a notary, within the United States, or in the Philippine Islands, Porto Rico or in any territory, district or dependency of the United States, or a commissioner appointed by the governor of this State within the United States; or upon the certificate of the clerk of any court of record in this State or the clerk of any court out of this State and within the United States, that the said writing was proved as to him by two witnesses before such clerk or before the court of which he is the clerk, or upon the 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 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. A duly qualified deputy clerk may make any certificate that his principal may make hereunder.

When a person signs such writing in behalf of another person, or corporation, or in a representative capacity, a certificate of the acknowledgment of the person, so signing, shall be sufficient.

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. For articles furnished and services rendered during last illness, not exceeding $50, for claims: (a) By physicians. (b) By druggists. (c) By nurses. (d) By hospitals. 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 cannot 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 pro-

or FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

vided; 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.

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 with minimum capital stock, not less than $10,000, and to require reports and examinations and to exercise general supervision thereof.

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 10 per cent of its capital, nor shall any dividend be declared by which such surplus fund is reduced below the said 10 per cent.

Every such bank must make statements to the state corporation commission, 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 state corporation commission 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 two-fifths of capital stock of the bank, the state corporation commission may make a special examination. 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 in jail from fifteen days to one year, or from one to three years in the penitentiary in the discretion of the jury.

There are no laws restricting savings banks as to the class of bonds and securities in which their funds may be invested.

A bank examiner and assistant are provided for with full powers of frequent and rigid examination of state banks at the expense of the banks.

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, except deed of trust upon stock invalid, 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 fraudulently dispose of personal property on which a deed of trust exists, without the consent of the trustee or beneficiary.

Checks. 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 two weeks after notice of the death of a depositor money standing to his credit, and after paying thereout 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.) "It is made larceny to obtain, with fraudulent intent, money, or other property by means of a check, draft, or order and the failure to have on deposit, or to the credit of the maker, or drawer thereof, with the drawee sufficient funds to pay the same, when presented, is prima facie evidence of fraudulent intent."

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 to 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. As to rolling stocks, cars, etc., of railroad companies, contracts concerning them are to be recorded in the circuit 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 a copy filed with the state corporation commission, 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, following by the word "owner." Conditional Sales must be recorded within five days after delivery of property.

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, typewritten, or printed, and must be sealed. The seal of a natural person may be a scroll, affixed by way of seal; but the impression of a corporate or an official seal on paper or parchment alone shall be as valid as if made on wax or other adhesive substance. The seal must be recognized as a seal in 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 futuro by deed. A deed conveying real estate, without words of limitation, passes the whole estate of the grantor, unless a contrary intention appears by the deed. A deed or will is necessary to convey an estate of inheritance or freehold for a term or 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 extensions thereof, 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.

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. The appellate jurisdiction of the supreme court of appeals extends to all criminal cases, to all cases involving the constitutionality of a law, controversies concerning title or boundaries of land, the condemnation of property, the probate of a will, appointment of personal representative, etc., without regard to the amount involved, and in all other civil cases where the amount in controversy is $300, or more, exclusive of costs and interest accrued after judgment of lower courts. Circuit court.—There are thirty-one circuit courts, presided over by as many judges, having jurisdiction of all matters of law and equity where the amount exceeds $20. Justice courts have jurisdiction to extent of $100; but any action, if for over $20, may be removed to the circuit 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. 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 like jurisdiction of other circuit courts as above, except in 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 Hustings 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 is the court of appeal for criminal matters which may be appealed from the police court. The police court of the city of Richmond has jurisdiction of criminal matters, such as may be tried by a justice of the peace. In cities of 45,000 or more there may be a civil justice court, presided over by a lawyer who has had five years' practice in this state. The court meets daily except on Sundays and legal holidays and cases may be heard upon five days' notice. The court has jurisdiction of claims less than $300 in value inclusive of interest. From any judgment of this court exceeding $20 exclusive of interest there may be an appeal as of right to any of the courts exercising common law jurisdiction in civil cases in such cities, but there can be no removal before trial. Richmond has such civil justice court.

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 commission 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, except that when the depositions are to be taken in a state where a commission is necessary then the clerk of the court in this State where the suit is pending may issue such commission. 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 parcenary to such of his kindred, male and female, as are not alien enemies, in the following course: 1. To his children and their descendants. 2. If

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 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 but be 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 nor 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 descend, except as follows: 1. The personal estate of an infant shall be distributed as if he were an adult. 2. If the intestate was married, the surviving husband or wife shall be entitled to one-third * * * if surviving issue * * *; if no issue, husband and wife entitled to whole of estate. In other words, this Statute has put both husband and wife on an equal footing, the law formerly being that the husband was entitled to the whole of the personal estate, and the wife only one-third.

Dower. A widow is endowed of one-third of all the real estate whereof her husband or any other to his use was at any time during the coverture seized of an estate of inheritance or entitled to a right of entry or action for such estate, unless her right to such dower shall be lawfully barred or relinquished. The right of dower may be relinquished by the wife uniting with her husband in conveying the real estate by deed of conveyance, etc., but no privy examination is now required. If wife, of her own free will, leave her husband and live in adultery, she shall be barred of her dower, unless he be afterward reconciled to her, and suffer her to live with him.

Executions may issue at any time within one year, and scire facias, or action to revive judgments within ten.

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.

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 of or from what they are or may be lawfully entitled to, shall, as to such creditors, purchasers, or other persons, their representatives or assigns, be void. This section shall not affect 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.

Garnishment. By garnishment any money due the defendant upon claim reduced to judgment, may be collected and the proceeds applied by the court to payment of judgment against the defendant.

Holidays. January 1st, January 19th, February 22d, May 30th, July 4th, first Monday in September, November 11 (Armistice Day), Thanksgiving day, December 25th, and every Saturday after 12 o'clock.

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 of his estate liable for such debts.

Insolvency. (There is no special statute on the subject.)

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.

Jurisdiction. (See Actions and Courts.)

Liens. (See Judgments, Mechanics' Liens, and Supply Liens.)

Limitations of Suits. Upon an idemnifying 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, contract, in writing (notes, etc.) signed by the party to be charged thereby, but not under seal within five years; accounts between merchant and merchant or for settlement of partnership, five years; on any other contract and on open accounts within three 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 is equity to enforce the lien in 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. Employes of a mining company are given a prior lien by statute for wages due.

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.)

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.

Probate. (See Wills.)

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 mortgage, 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.

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.)

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 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 a will made 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, 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, except that in the city of Richmond, the chancery court shall have such jurisdiction. 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.

or FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

SYNOPSIS OF

THE LAWS OF WASHINGTON

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by MESSRS. BAXTER, JONES & HUGHES, Attorneys
1117 White Bldg., Seattle, Wash. (See Card in Attorneys' List.)

Acknowledgments. Deeds, and other instruments may be acknowledged in this State before a judge of the supreme court, or the clerk, or deputy, before a judge of the superior court, or the clerk, or deputy, before a justice of the peace, or a county auditor, or deputy, or a qualified notary public, or any qualified United States Commissioner appointed by any District court of the United States for the State of Washington. Outside this State before any officer authorized thereto in such state, or before any commissioner appointed by the governor of this State; and if not acknowledged before a commissioner appointed by the governor or by officer having a seal, a clerk of a court of record shall attach certificate. In any foreign country acknowledgements may be taken before any minister plenipotentiary, secretary of legation, charge d'affaires, consul-general, consul, vice-consul, consular agent, commercial agent of the United States, or the proper officer of any court of said country, or notary public or the mayor or chief magistrate of any city, town, or other municipal corporation therein. The following form is used: no separate acknowledgment is necessary for the wife:

State of Washington, } ss.
County of..... }

I, ... a Notary Public in and for the State of Washington, do hereby certify, that on this .... day of ....., A. D., 19.., personally appeared before me ..... to me known to be the individual .....described in and who executed the within instrument, and acknowledged that ..... signed and sealed the same as .....free and voluntary act and deed, for the uses and purposes therein mentioned.

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

....., Notary Public.
Residing at ....., Washington.

Acknowledgment by a corporation substantially in the following form:

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; administrator, executor, guardian, or trustee of an express trust, may sue without joining the person for whose benefit the action is prosecuted. 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 to the power of the court to change the place of trial. Actions 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. Defendants to appear and defend within twenty days when served personally in the State, and winthin sixty days when served personally outside the State. When defendant cannot be found summons may be published, after filing the complaint, once a week for six consecutive weeks, directing defendant to appear and answer within sixty days after first publication.

Administration of Estates. Any person having custody of any will shall, within thirty days after receiving knowledge of the death of the testator, deliver said will into the superior court, or to the person named as executor and every executor shall present same for probate or present his written refusal to act within forty days after knowledge of testator's death; 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. Letters of administration granted in the following order: 1. To surviving husband or wife, or such person as he or she may direct. 2. To next of kin, in the following order; child or children, father or mother, brothers or sister, grandchildren. 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 rights in writing then the court may appoint a suitable person. Executors or administrators must, within one month after appointment, make to the court a true inventory of the real and personal estate of deceased, appraised by three persons appointed by the court; a notice to creditors must be published four weeks, requiring all claims to be presented within six months after date of such notice; all claims not presented within the time specified shall be barred. Debts shall be paid in the following order: 1. Funeral expenses. 2. Expenses of last sickness. 3. Wages due for labor performed within sixty days preceding the death. 4. Debts having preference by the laws of the United States. 5. Taxes or any debts or dues owing to the State. 6. Judgments rendered against the deceased in his lifetime which are liens upon real estate, and mortgages in order of their priority. 7. 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 and, at time estate is ready to be closed, to have entered a decree of solvency, adjudging the heirs and those entitled to distribution.

Affidavits. Affidavits may be taken before any judge of the supreme court, clerk, or deputy, judge of the superior court, clerk, or deputy, justice of the peace, notary public, county auditor, or his deputy.

Aliens. The ownership of lands by aliens other than those who have declared their intention to become citizens, is prohibited, except where acquired by inheritance, under mortgage or in the collection of debts. These provisions shall not apply to lands containing valuable deposits of minerals. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien.

Arbitration. Parties may submit their differences excepting such as respect the title to real estate, to any person or persons mutually selected by an agreement in writing. The award may be filed with the Clerk of the Superior Court, and execution issue thereon.

Assignments. No general assignment of property by an insolvent, for the benefit of creditors, shall be valid unless it be made equally for the benefit of all creditors. The debtor must annex to the assignment an inventory of all his estate and a list of his creditors; 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 shall select one or more assignees, who, after giving bonds shall file an inventory of the estate, publish notice to creditors, declare dividends pro rata to creditors, and close up the affairs. Upon the final report of the assignee, it appearing that the assignor has been guilty of no fraud, concealment, or diversion of property, 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 assignment.

Attachment. A writ issued by clerk of court in which the action is pending at any time 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 on a contract express or implied, and that the attachment is not sought to hinder, delay, or defraud any creditor 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, 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, or for damages from commission of some felony or for the seduction of a female, or that the object for which the action is brought is to recover on a contract, express or implied. The plaintiff shall file a bond in a sum not less than $300 in superior court, nor less than $50 in justice court, and in all cases double the amount for which judgment is sought.

Banks. Capital Stock. Minimum $15,000 in villages of 1,000 inhabitants; and graded up to $150,000 in cities having 100,000 inhabitants or more, except one may be chartered outside of business district with $50,000 capital. Shares $100; all of the capital stock shall be paid in cash before commencing business; incorporators, or directors, not less than five. Articles executed in quadruplicate, and state director of taxation and examination shall issue certificate after personal examination, authorizing the bank to transact business.

Responsibility. 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.

Powers. Banks exercise all the usual banking powers, loan money on real estate or personal security.

No bank shall purchase its own stock, nor loan upon its stock, nor subscribe for stock in any other than a Federal Reserve Bank of which it is a member.

Duties. A bank combining commercial and savings business shall keep separate books and accounts for each kind of business. Deposits carried in names of two persons jointly, may, upon the death of one, be paid out on the receipt of the survivor. If bank pays raised or forged check, the depositor must make claim within sixty days. Where depositor confirms stop payment orders relating to checks within fifteen days same remains in effect for six months and until bank gives depositor ten days notice of expiration of period; stop payment orders may likewise be renewed for six months period. Bank may refuse payment of check presented one year after drawing without incurring liability. No officer, or employe shall loan to himself any of the bank's funds upon his own note, without first obtaining approval of directors, entered in its records. At least one-tenth of profits shall be carried to surplus until surplus amounts to 20 per cent of the capital stock.

Reports. The state director of taxation and examination shall make a general examination at least once each year; but he may in proper cases accept examinations required under terms of federal reserve act. His fees are $30 to $50 for each examination plus one one-hundredth of 1 per cent of all deposits. Banks shall make at least three reports each year to director on days designated by him. Reports to be published once in a local newspaper. The commissioner may take charge of banks and suspend the officers.

Penalties. Gross misdemeanor, punishable by fine or imprisonment, to use the words, "bank," "banking," "banker," "trust," or plural thereof, or to use any sign, advertisement, stationery, etc., unless duly organized and incorporated. Felony to fraudulently receive any deposit knowing that bank is insolvent; fine not exceeding $1,000 and imprisonment not exceeding ten years in the penitentiary, or both. Gross misdemeanor to certify a check unless the amount is actually to the credit of the drawer. Felony to willfully and knowingly subscribe, or make false statement or false entry in the books of a bank or exhibit fictitious papers or securities with intent to deceive the bank commissioner. Knowingly drawing or uttering a check or draft upon a bank in which one has not sufficient funds is a crime punishable by fine or imprisonment or both.

Taxation. Stock of United States or state banks located within the state shall be assessed to the owners thereof in the cities or towns where such banks are located and not elsewhere; all such shares shall be assessed at their full and fair value in money on the first day of March in each year, first deducting therefrom the proportionate part of the assessed value of the real estate belonging to the bank; persons or corporations who appear from the records of the bank to be 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.

Banks, Foreign. A foreign corporation whose name contains the words "bank," "banker," "banking," or "trust," or whose articles of incorporation empower it to do a banking or trust business and which desires to engage in the business of loaning money on mortgage securities or in buying and selling exchange, coin, bullion or securities in this state may do so, but only upon filing with the State Director of taxation and examination, and with the Secretary of State a certified copy of a resolution of its governing board to the effect that it will not engage in banking or trust business in this state, which copy shall be duly attested by its president and secretary. Such corporations shall also comply with the general corporation laws of this State relating to foreign corporations, doing business herein. Penalty for each violation $1,000.

Blue Sky Law. The act applies to domesic and foreign corporations, associations, joint stock companies, co-partnerships and trustees. It excepts banks, congressional corporations, insurance companies and savings and loan associations doing business in the State, public utilities subject to State control, educational and charitable institutions, and any domestic or foreign corporation or association "engaged in the metalliferous mining industry as its principal business."

The administration of the act is vested in the Secretary of State; his permit to sell securities or to act as broker or agent must be secured; foreign corporations must appoint him their attorney upon whom legal process may be served; but his rulings are subject to court review in proper proceedings.

Applications for permits must set forth the names, addresses and occupations of the officers of the company; its location, assets and liabilities; plan on which it proposes to transact business; number of shares in the treasury and amount to be paid agents for the sale of stock; copy of security to be issued and contract concerning same; copy of any circular, prospectus and advertising matter to be used; additional information as required. Co-partnerships and unincorporated associations must furnish copies of their articles of association; trustees of the instrument creating the trust; corporations of their articles of incorporation and by-laws, together with the minutes of corporate meetings affecting issue of securities.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Permit fees $10, if capital does not exceed $100,000, otherwise $25; broker's certificate $25, and thereafter $10 annual fee; agent's certificate $5.00 and $2.00 annual fee.

Chattel Mortgages. Chattel mortgages may be had upon all kinds of personal property, rolling stock of railroad, machinery, boats, 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 within ten days from the time of execution thereof. 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. Mortgages upon crops can not be made for more than one year in advance. 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 In the absence of an agreement between the parties controlling the manner of the disposition of the pledge two remedies are open to the pledgee. He may bring an action for the foreclosure and sale of the pledge, or he may exercise his implied authority and sell the pledge at public auction after having given reasonable notice of the time and place of such sale to the pledgor.

Community Property. All property acquired by husband or wife or both, during marriage, otherwise than by gift, devise or inheritance is community property, the spouses each owning an undivided one-half interest therein and can only be conveyed or incumbered by an instrument in writing executed jointly by both spouses; except that the husband has the management and control of community personal property with power to dispose thereof, but he shall not devise by will more than one-half of same.

Conditional Sales shall be absolute as to purchasers, incumbrancers 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.

Vendor can assign his contract to secure a debt or other obligation and assignee has right to enforce Vendor's remedies and should file his assignment to be from a lien upon property as against Vendor and subsequent purchasers and encumbrances.

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. 5. An agreement authorizing or employing a broker or agent to sell or purchase real estate for compensation or a commission. 6. Sale of goods of value of $50 or over unless the goods are accepted and received, or part of them, or payment made to bind the bargain. 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 and encumbrance upon real estate, shall be by deed, in writing and duly acknowledged by the party making and signing it. The use of private seals to signature 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 Married Women.)

The statute prescribes short forms for "warranty" and "quitclaim" deeds.

Corporations. Corporations formed under general laws. 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 subscribe articles of incorporation in triplicate, and acknowledge the same, and file one copy 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 to be located, and retain the third. Said articles shall state the corporate name, the object, 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 the company, for a time designated (not less than two or more than six months), and name of principal place of business. Any corporation other than one for banking, insurance or guaranty purposes may issue shares of either common or preferred stock without any nominal or par value. The Articles may provide that the stock shall consist wholly of stock having a par value or wholly of stock without nominal or par value or part of one class and partly of the other and in case of non-par value stock, the total number of shares shall be stated. Non par value stock where authorized may be issued from time to time for such consideration, in labor, services, money or property, as the Trustees direct pursuant to Articles, or if such Articles shall not so provide, then by consent of two-thirds of every class of stock outstanding. When the articles shall have been filed, the corporation shall have power, 1, to sue and be sued; 2, to make and use a seal; 3, to purchase, hold, mortgage, sell and convey real and personal property; 4, to appoint officers, agents and servants, such as their business shall require, to define their powers, prescribe their duties and fix their compensation; 5, to require of them security, 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); 6, 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. The incorporation and annual license fees are graduated, depending on amount of capitalization. Secretary of State shall strike from the rolls in his office the names of corporations not paying annual license for two years. But they may be reinstated upon application by paying all license fees and penalties due and the further sum of $10 each year its name has been stricken from the rolls. Forbidden to blacklist employes. 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. Conflict of names through similarity is forbidden. Any officer who shall publish or consent to the publication, any wilfully untrue, or fradulently exaggerated report, prospectus, or other document intended to give a greater value to the shares of the corporation than they possess, with a view to defraud, shall upon conviction, 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.

Courts and Jurisdiction. The supreme court is vested with all power to carry into complete execution all its judgments, and 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 involving $200 or more. The superior courts are always open except on non-judicial days; they have appellate jurisdiction in cases arising in justice courts. 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, insolvency, probate, divorce, annulment of marriage, and special proceedings not otherwise provided for; they 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 jurisdiction less than $100. (except where the action includes the title to real property, the enforcement of a lien on real estate), or a suit against an executor, or administrator as such; a transcript of judgment, filed in the office of the county clerk becomes a lien upon real estate of the judgment debtor. Garnishment in justice courts.

Days of Grace are abolished by negotiable instruments law.

Depositions may be taken when the witness resides out of the State, or out of the county and more than twenty miles from the place of trial, or is about to go out of the County and more than twenty miles from the place of trial and will probably 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, 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 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. It may also be taken before a judge, justice or chancellor of any court of record, a justice of the peace, notary public, mayor, or chief magistrate of any city or town. 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 commissioners shall have power to compel attendance of witness by petition to the court for an order upon witness to attend, and for punishment for contempt or refusal to comply.

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 of no will, half of the community property shall descend equally to the legitimate issue of the 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.)

Dower. Statutes in regard to community property, real and personal, have taken the place of dower and tenancy by courtesy, which are abolished. (See Community Property.)

Execution. After the expiration of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor. Personal property may be sold on ten days' notice. Real property may be redeemed any time within one year after 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, in the possession of purchaser, and is redeemed after the first day of April and before the first day of December, the purchaser shall be entitled to possession until the first day of December following, or shall be reimbursed for his labor in preparing such property for crops, or planted crops, subject, however, to rental charges. Land sold under execution used for farming shall remain in possession of debtor during period of redemption but purchaser shall have lien on crops for interest on purchase price and taxes at 6 per cent. If the property sold be a homestead, occupied for that purpose at the time of sale, the judgment debtor shall have the right of possession during year of redemption without accounting for rents or value of occupation. The sheriff shall deliver deed after the expiration of one year from date of sale, provided such sale has been confirmed by the court and no redemption has been made.

Exemptions. To every householder, a homestead to the value of $2,000, 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 material used in his trade, not to exceed $500; to a farmer, teams and farming utensils, not exceeding $500, 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 persons, all fire arms for family use, and boat with rigging, not exceeding $250; any pension money from the United States, and fire insurance money to the amount of exemption allowed upon property, and the proceeds of all life and accident insurance are also exempt. Wages of $100 per month, due to any person having a family to support, shall be exempt from garnishment. Except when the debt is for actual necessaries furnished to debtor's family, then wages to the amount of $10 per week for four consecutive weeks shall be exempt. No property is exempt from an execution issued upon a judgment for the purchase price thereof, or for any tax levied thereon. No property exempt from execution for clerks', laborers', or merchanics' wages earned within this State, nor for actual necessaries not exceeding $50 in value or amount furnished to the defendant or his family within sixty days preceeding 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 the following cases: 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 or insignia of any military order or of any secret society or order of or the G. A. R. without right; misrepresentation of pedigree of breeding animals or when selling animals; removing mortgaged chattels; to issue false warehouse receipt; also against false advertising.

Foreign Corporations. Before doing business in the State, a foreign corporation must file with the secretary of state a copy of its

or FRASER.stlouisfed.org
Reserve Bank of St. Louis

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 upon ceasing to do business and withdrawing from State agent shall be maintained until Statute of Limitations shall have run against all claims. 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. Provided that every foreign building and loan association or savings and loan association doing business in this State prior to July 1, 1913, shall deposit and keep with the State Auditor, or with a duly chartered trust company approved by the State Auditor, all mortgages heretofore received by it in this State, and all mortgages taken in the usual course of its business in this State; and Provided further, that on and after July 1, 1913, no foreign building and loan association or savings and loan association shall be permitted to commence and do business within the State of Washington, unless such associations have been engaged in such business within the State prior to said date. Any agent of a foreign 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.

Garnishment. Garnishment may be issued in the following cases: 1. When an original attachment has been issued. 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. 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. On garnishment in Superior Court before judgment bond must be given to defendants in double amount of demand. No bond is required in justice court garnishments either before or after judgment.

Holidays. The following are State holidays: January 1, New Years Day. February 12th, Lincoln's Birthday. February 22d, Washington's Birthday. May 30th, Memorial Day. July 4th, Independence Day. The first Monday of September, Labor Day. October 12th, Columbus' Birthday. General election day, Thanksgiving Day, December 25th, Christmas. Sundays, when a legal holiday falls on Sunday the next succeeding day is legal holiday.

Hunter's License. A resident to hunt in the county, $1.50; in the State, $7.50; a non-resident in the county, $2.50; in the State, $10.00.

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, or subject to distribution by the courts of this 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 estate. On all sums above the first $10,000, where the same shall pass to father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of adopted child, one (1) per cent of any value up to $50,000 and graded up to 5 per cent where estate exceeds $250,000, 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 graded up to 9 per cent where estate exceeds $250,000, and where the estates go to collateral heirs beyond the third degree, or strangers to the blood, 6 per cent where the estate does not exceed $50,000 and graded up to 15 per cent where estate exceeds $250,000.

All bequests and devises for charitable purposes are exempt from the inheritance tax.

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 months.

Any interest contracted for over 12 per cent is usurious, but contract not void. In action only principal recoverable, less the amount of interest accrued as contracted for, and costs. If interest has been paid, judgment for principal less twice the amount of interest paid and less accrued interest.

Judgments. A judgment is a lien for the period of six (6) 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. Judgments of state and federal court are liens in the county where entered and also where transcript is recorded.

Liens. All vessels are liable for liens in following order for three years: 1. For services rendered on board. 2. For work done or material furnished in this State for their construction, repair or equipment. 3. For their wharfage and anchorage in this State. 4. For non-performance of any contract for transportation between places within the State. 5. For injuries to persons or property within state or in transportation to or from state. Liens for labor and material on all structures, railroads, mines, ditches, etc., to be filed in ninety days and suit brought in eight months; also liens for logs, lumber and farm products.

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 ninety days after work done; suit to foreclosure must be had within nine months after filing, or by notice and sheriff sale,as in chattel mortgages.

Limitations. 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 or for injury to the person, for relief on ground of fraud, for seduction and breach of promise. Five years—Action for the recovery of real estate sold by an executor or administrator; 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, judgment or decree of any court, or for rents, or profits of real estate. Ten years—Recovery of real property or the possession thereof.

Married Women. Married women have the same right to acquire, dispose of property, to contract, sue, and be sued, as if unmarried; not liable for the debts of husbands; may manage, devise, and convey 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 in all cases where she is interested. Expenses of the family and education of the children are chargeable on property of both husband and wife, or either of them, and they may be sued jointly or separately on such claims.

Mortgages. Mortgages are executed in same manner as deeds, they are not deemed a conveyance or transfer to 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. When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, a deficiency judgment will be granted. Sale conducted as other sales on execution. If, before the final judgment, the defendant pay into court the interest due and any installment of principal then due, together with accrued costs, further proceedings shall be stayed until a default again occurs; sale of the property shall be made in parcel, if possible, and only so much shall be sold as will be sufficient to pay the judgment, with costs.

Notes and Bills. The negotiable instruments act is in force.

Powers of Attorney. Powers of attorney shall be executed 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. No limitations on powers conferred.

Probate Law. The superior courts have jurisdictions of all probate matters, with power to take proof of wills, grant letters testamentary amd 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 authorized to present bills of exchange and promissory notes, and protest the same, and to charge fees for noting, protesting, and mileage. No protest necessary on bills issued and payable within the State.

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. (See Execution.)

Replevy. Affidavit shall be made by plaintiff 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 in double the value of the property. The sheriff shall then take the property into custody, and, without delay, serve a copy of the affidavit and bond upon the defendants personally, or his agent; if neither can be found then by leaving same at his house, with suitable person.

Taxes. State taxes shall be levied by the state board of equalization and certified to each county auditor on or before the last Monday of September of each year. County taxes shall be levied by the county commissioners between the first and second Mondays of October, each year. The county treasurer shall receive and collect all taxes whether levied for state, county, bridge, road, municipal or other purposes. Taxes are due and payable on and after the first Monday in February, and become delinquent on May 31, from which date interest at 12 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 June 1, preceding. If taxes be delinquent eleven months, the county commissioners may authorize the treasurer to issue a delinquency certificate, the holder of which may bring suit after expiration of three years for sale and absolute title. If the taxes due in any year be paid on or before March 15th of said year, a rebate of 3 per cent shall be allowed.

Trust Companies. Five or more persons may form a trust company: The capital stock shall be a minimum of $50,000 in cities of less than 25,000 inhabitants and graded up to $200,000 in cities of 100,000 or more population, shares of $100 each, all of which shall be paid in cash before any trust company shall be authorized to transact any business. Must make not less than three verified reports of resources and liabilities each year to the State Director of taxation and examination.

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 $200, 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, but mariners at sea and soldiers in the military service may dispose of their wages or personal property by nuncupative will; no real estate shall be devised by a nuncupative will; nuncupative wills must be offered for proof within six months after the speaking of the testamentary words.

Foreign wills legal if executed in form required by the state in which executed or by the state of testator's domicile.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

SYNOPSIS OF

THE LAWS OF WEST VIRGINIA

RELATING TO

BANKING AND COMMERCIAL USAGES

Prepared and Revised by MESSRS. BROWN, JACKSON & KNIGHT, Attorneys at Law, The Kanawha Valley Bank Bldg., Charleston.
(See Card in Attorneys' List.)

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.

Actions. The common law forms are retained, modified by statute in some respects. Rules are held by the clerk on the first Monday and following Tuesday and Wednesday in each month at which parties file their pleadings at law and equity, take orders of publication and rules on opposite party to plead, etc.

Administration of Estates. Non-residents may qualify as personal representatives. Administrators may be appointed by the county court, which has general charge of all probate matters. Administration is granted to the distributes 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 distributees fail to apply for administration for a period of thirty days after death of decedent, the court may grant administration to one or more of his creditors or to any other person. Bond is required for a penalty equal to full value of personal estate. If three months elapse without a personal representative being appointed, the court on motion may appoint the sheriff or any other county official who acts without giving additional bond.

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 subscribed by such officer, with his official seal annexed, and if he have none, the genuineness of his signature, and his authority to administer an oath, must be authenticated by some officer of the same state or country under his official seal, and they may also be made before a commissioner appointed by the governor of this State.

Aliens. No disabilities attach to aliens, not enemies, in reference to purchase, enjoyment, conveyance, devise, or descent of property.

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.

Arrests. Defendant in an action may be arrested on the following grounds.

(1) That he has moved or is about to move his property from the State with intent to defraud his creditors, or

(2) that he has or is about to convert his property into money or securities with like intent, or

(3) that he has assigned or disposed of his property or is about to do so with like intent, or

(4) that he has property or rights of action which he fraudulently conceals, or

(5) that he fraudulently contracted the debt for which the action is brought, or

(6) that he is about to leave this State and reside in another without paying the debt for which the action is brought.

Assignments and Insolvency. There are no insolvency 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 situated, 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 five per cent, but if not so stated are five per cent on the first $300 and two per cent on the balance. The assignee is not required to give bond unless one of his cestuis que trustent 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. Sale of merchandise in bulk prohibited unless notice, giving particulars of sale, is given to creditors.

Attachments. In any action at law or suit in equity the writ may issue when the defendant is a foreign corporation, or a non-resident, has left or is about to leave this State to defraud his creditors, conceals himself so that summons cannot be served upon him, is removing or is about to remove nis property rrom this State, is converting or is about to convert his property into money or securities with intent to defraud his creditors, or has assigned or disposed of his property with like intent, or conceals his property or rights of action or fraudulently contracted the debt for which the suit or action is brought. Plaintiff or agent must make affidavit that one or more of these facts exist and unless attachment is issued on first grounds, affiant must also state in affidavit the material facts relied upon.

Banks. It is necessary to obtain charter from Secretary of State, also certificate from Commissioner of Banking before commencing public business. Minimum capital stock for banks is $25,000. 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, and for all liabilities accruing while they are such stockholders. Trust companies doing business in this State must have capital of not less than $100,000 paid up and unimpaired. Foreign trust companies must obtain certificate from Banking Commissioner before doing business in this State.

Commissioner of Banking shall make an examination of each bank twice in each twelve months. Each bank shall make at least four reports annually to the Banking Commissioner, verified by oath of its president, or cashier. Each bank shall maintain on hand as a reserve an amount equal to at least 15 per cent of the aggregate of all deposits which are subject to withdrawal on demand.

Dividends may be declared annually, semi-annually, or quarterly, but before declaring any dividend a bank must carry one-tenth part of the net profit accrued to its surplus fund until the same shall amount to 20 per centum of its capital stock.

Associations and corporations engaged in dealing in mortgages, bonds, notes and other securities, must obtain a permit from Commissioner of Banking to do business and must file with him reports and are subject to examination by the Commissioner.

Blue Sky Law. The usual Blue Sky Laws are in effect in West Virginia.

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, if executed by a natural person, need not be under seal; otherwise they must be under seal. In every case, must be acknowledged or witnessed by two witnesses; 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. They may be formed under general laws, but not created by special acts. Stockholders are liable to amount of their stock subscribed and unpaid. Cumulative voting. In absence of by-law, a majority of stock present constitutes a quorum. There must be at least five incorporators, who must pay in at least ten per cent of the capital stock subscribed, and two of the incorporators must make affidavit that said amount was paid in good faith. 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 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 Negotiable Instruments.)

Depositions, without a commissioner, may 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. Reasonable notice shall be given to the adverse party of the time and place of taking depositions.

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-grandfather 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 descendants 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 blood. But if all the collaterals be of the half-blood, the ascending kindred, if any, shall have double portions. 3. When the children of the intestate or his mother, brothers and sisters, of 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 begotton. 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 marriage 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.

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 over $1,000, six months. The debtor may release property upon which an execution from the circuit court has been levied by giving a forthcoming bond, upon the forfeiture of which judgment may be obtained upon motion after ten days' notice, and an execution then issued, upon which no forthcoming bond is allowed to be given.

Exemptions. Any husband or parent residing in this State, or the widow, or the infant children of deceased parents, may set apart and hold personal property to the value of not exceeding $200, to be exempt, from execution or other process, except as hereinafter provided. And any mechanic, artisian, or laborer residing in this State, whether he be a husband or parent, or not, may hold the working tools of his trade or occupation to the value of $50 exempt from forced sale or execution. Provided, that in no case shall the exemption allowed any one person exceed $200. This exemption shall not apply to any claim for the purchase money of the personal estate in respect to which such exemption is claimed or to any proceeding for the collection of taxes or county or district levies. Such husband, parent, or infant children of deceased or insane parents may set apart a homestead of the value of $1,000, under certain regulations.

Garnishment. The plaintiff in an attachment, or a judgment creditor may, by an indorsement on the attachment order or by suing out a suggestion on his execution, as the case may be, designate any person as being indebted to or having in his possession the effects of the defendant or one of the defendants; and such person, upon service

or FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

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. The following are legal holidays, viz: first of January, twelfth day of February, twenty-second day of February, fourth day of July, thirtieth day of May, twenty-fifth day of December, first Monday in September, twelfth day of October, and all days that may be appointed or recommended by the Governor of the State or the President of the United States, as days of thanksgiving or for the general cessation of business. When any of said days or dates falls on Sunday it is lawful to observe the succeeding Monday as such holiday.

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 before a deed to such purchaser is recorded. 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." A judgment which is a lien on real estate shall continue to be a lien, in case execution issued on such judgment, only if a copy of the execution be filed in the office of the county clerk within ten years of the date of such judgment.

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. No lien, reserved on the face of any conveyance of real estate, or lien created by any deed of trust or mortgage on real estate, shall be valid or binding as a lien on such real estate after expiration of twenty years from date on which the debt or obligation secured thereby becomes due. 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. Suit 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 separate 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.

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 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.

Negotiable Instruments. Negotiable instruments must contain an unconditional promise or order to pay a sum certain in money on demand or a fixed or determinable future time to order of a specified person or to bearer, may be in installments and contain the provision that on any default the whole shall become due; may authorize the sale of collateral securities and confession of judgment; may be payable at fixed time after date or sight, or after certain specified event, but not upon a contingency; if it reads "I promise to pay" all signers are jointly and severally liable; absence or failure of consideration is a matter of defense as against any person not a holder in due course and partial failure of consideration is a defense pro tanto whether the failure is an ascertained and a liquidated amount or otherwise.

Every endorser who indorses without qualification warrants that on due presentation the instrument shall be accepted or paid and if dishonored and necessary proceedings on dishonor taken he will pay amount to holder, or subsequent endorser who may be compelled to pay it; no days of grace; when maturity falls on Sunday or holiday payment is due on next business day, if due on Saturday, it must be presented on next business day, but if payable on demand holder may present same before noon on Saturday if entire day is not holiday.

Presentment not necessary to charge the person primarily liable, but if instrument is payable at special place ability and willingness to pay it there at maturity is equivalent to tender; if not on demand presentment must be made on day it falls due; when payable on demand presentment must be made within reasonable time after its issue, except bill for exchange may be presented within reasonable time after last negotiation.

Acceptance. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. Holder may refuse qualified acceptance and treat bill as dishonored; if he takes qualified acceptance drawer and endorsers are discharged unless they authorized same or assented thereto.

Protest. Foreign bills which are dishonored by non-acceptance must be duly protested by notary or any respectable resident when bill is dishonored in presence of at least two credible witnesses. When bill is lost, destroyed or wrongly detained from the person entitled to hold it, protest may be made on copy or written particulars thereof.

Promissory note is unconditional promise in writing to pay on demand or at fixed or determinable time a sum certain in money to order or bearer; where note is drawn to maker's own order, it is not complete until endorsed by him.

A check is a bill of exchange drawn on a bank, payable on demand, must be presented within reasonable time after its issue or drawer will be discharged from liability thereon to extent of loss caused by delay. Where holder procures acceptance or has check certified drawer and endorsers are discharged. Check does not operate as an assignment of funds to credit of drawer in the bank and bank is not liable to holder unless it accepts or certifies the check.

The West Virginia negotiable instrument law went into effect January 1, 1908, and was intended to establish a law uniform with the laws of other states on that subject.

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.

"Nothing in any law of this State shall in any manner whatsoever, affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument or any other transaction by a bank in this State because done or performed on any Saturday between twelve o'clock noon and midnight, provided such payment, certification, acceptance or other transaction would be valid if done or performed before twelve o'clock noon on such Saturday; provided further, that nothing herein shall be construed to compel any bank in this State, which by law or custom is entitled to close at twelve o'clock noon on Saturday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid, on any Saturday after such hour except at its own option." (1919).

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 postoffice 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. If a person make, issue or deliver to another for value a check or draft, and has not funds in the bank to pay the check, he is guilty of a misdemeanor if amount is under $20; if over $20, a felony.

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. Appeal from county court lies to circuit court.

Protest. (See Negotiable Instruments.)

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 January 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 of 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 inheritance of $1,000 and over in value.

Business—Profession tax imposes on gross sales or income a tax of (a) 42/100 of one percentum on coal, one percentum on oil, 1-17/20 of one percentum on natural gas, 9/20 of one percentum on limestone, sand and other mineral products and timber; (b) 21/100 of one percentum on manufactured products; (c) 1/5 of one percentum on sales of tangible property, real or personal, (bonds and other evidence of indebtedness and stocks excepted), except as to wholesalers or jobbers for whom the tax is 1/20 of one percentum; (d) 3/10 of one percentum on banks, one percentum on steam railroads, 2/5 of one percentum on street railroads, one percentum on oil and gas pipeline companies, 3/5 of one percentum on telephone, telegraph, express, electric light and power companies, 2/5 of one percentum on other public service or utilities companies; (e) 3/10 of one percentum on contractors; (f) one percentum on amusement places; (g) 3/10 of one percentum on all other business. Certain provisions are made to avoid double taxation and taxation on interstate commerce and regulations are prescribed for calculating taxes in certain instances. Exemption of $10,000.00 is allowed on gross income or values.

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.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

SYNOPSIS OF

THE LAWS OF WISCONSIN

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by BLOODGOOD, KEMPER & BLOODGOOD, Attorneys at Law, Mitchell Bldg., Milwaukee. (See Card in Attorneys' List.)

(References are to sections of Wisconsin Statutes 1913 and the Laws of Wisconsin for 1915.)

Acknowledgments. All acknowledgments of the execution of conveyances may be before the following to-wit:

1. Within the State: Judge or clerk of court of record, court commissioner, county clerk, notary public, justice of the peace, police justice, or United States court commissioner. The officer taking same shall endorse thereon, a certificate of the making thereof and the date under his hand and seal, if any. (Notaries public must state also date of expiration of their commissions.) Such acknowledgment may be 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 persons who executed the foregoing (or within) instrument and acknowledged the same.

....
(Insert designation of officer.)

2. Outside the State: Judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized to do so, or commissioner appointed by the governor for such purpose or, if at a military post, before the commanding officer thereof, but, except as to specially appointed commissioner, a clerk of a court of record with its seal attached, a notary public with his seal attached, and the commanding officer of a military post, the signature and the office held, by the acknowledging officer, must be certified to by certificate of a clerk of a court of record. Acknowledgments outside the State may be made on above or pursuant to the laws of such outside place.

Actions. The circuit and some county courts have general civil jurisdiction; justices of the peace of actions (except as to some torts and action involving title to land), up to $200. In Milwaukee County a new civil court has been established with general civil jurisdiction up to $2,000. The practice is under a code. Non-residents must give security for costs on commencing suit if same is demanded, except in justice court, where it is always necessary.

Administration of estates is vested in the county courts. Notice by publication three consecutive weeks, or otherwise as directed by the court, must be given for proof of claims. Claimants have from four months to one year after order fixing time to file claims. All claims not filed within time limited are barred, unless the court shall grant an extension of time provided that application is made therefor for good cause shown not later than sixty (60) days after the expiration of the time fixed as aforesaid. The time so extended shall not be more than two years from the date of the letters.

Administration of intestate is granted to

1. Widow, surviving husband or next of kin, or both, or such person as they may request, if suitable.
2. If above unsuitable, or if no request is made for thirty days after death, to one or more of principal creditors.
3. If neither in (1) or (2) willing or competent to act, then to such other person as the court thinks proper.
4. If neither (1) or (2) apply for sixty days after death, then any person in whose favor a cause of action exists, may obtain appointment.

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. 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 the certificate of a 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.

Aliens may acquire, transfer, and inherit property like citizens, except that non-resident aliens cannot acquire more than 320 acres of land by purchase. Alien women are not barred of dower. (See Descent, Dower.)

Arbitration. All persons, except those under disability, may, by agreement in writing, with one or more witnesses, submit any controversy, except certain 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.

Attachments. (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 $5.00, 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. 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. (See Assignment for Benefit of Creditors.)

Banks. State banks may be formed by any number of adult persons who are residents of Wisconsin, not less than seven in number.

The aggregate amount of the capital stock of any bank shall not be less than ten thousand dollars in towns, villages or cities having less than fifteen hundred inhabitants; and shall not be less than twenty thousand dollars in towns, villages or cities having more than fifteen hundred and less than thirty-five hundred inhabitants; and shall not be less than twenty-five thousand dollars in any village or city having more than thirty-five hundred and less than five thousand inhabitants; and shall not be less than thirty thousand dollars in any city having more than five thousand and less than ten thousand inhabitants; and shall not be less than fifty thousand dollars in any city having more than ten thousand inhabitants, according to the last official census; provided that in a town of any population not having within its limits an incorporated or unincorporated city or village with a population of fifteen hundred inhabitants or more, this section shall not require a capital stock in excess of ten thousand dollars.

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 examine the affairs of each bank in the state at least twice in each year, and at any other time that 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 five times in the year every bank shall report to the examiner upon a prescribed form, showing fully the condition of its business. Such reports shall be published in a newspaper in the county. No security but the individual liability of each stockholder to the amount of his stock is required from banks of deposit and discount only, but this liability remains for six months after disposal of stock, and by written declaration each stockholder may become individually liable for all debts of the bank.

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 Sale. (See Sales.)

Chattel Mortgages must be filed in the office of the clerk of the town, city or village where the mortgagor resides, or in case he is a non-resident of the state then in the office of the clerk of the town, city or village where the property mortgaged may be at the time of the execution of such mortgage. 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 filng affidavit of amount unpaid within thirty days before the expiration of every two years from date. When such mortgage shall be of a stock of goods, wares and merchandise, or of fixtures pertaining to same, the mortgage shall in addition, be filed in the office of the register of deeds in the county in which town, city or village is situated, in the office of the clerk of which the mortgage is filed. 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 four months 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 prior to five days from seizure cannot be had without mortgagor's consent, and the goods cannot 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.

Conveyances of any interest in land may be by deed signed, sealed and acknowledged by person conveying without any other ceremony, but no alienation by a married man of his exempt homestead shall be valid without the signature of his wife to the same. The following conveyances are sufficient to pass all estate grantor can lawfully convey and imply the usual covenants.

Warranty Deed. A. B. grantor, of .....county, Wisconsin hereby conveys and warrants to C. D., grantee, of.....county, Wisconsin, for the sum of .....dollars, the following tract of land in .... county (here describe the premises.)

Witness the hand and seal of said grantor, this .....day of .... 19..... In presence of

....(SEAL)
....(SEAL)

Quitclaim Deed. A. B., grantor, of .....county, Wisconsin, hereby quitclaims to C. D., grantee, of .....county, Wisconsin, for the sum of .....dollars, the following tract of land in .....county (here describe the premises.)

Witness the hand and seal of said grantor, this .....day of ..... 19...., in presence of

....(SEAL)
....(SEAL)

Mortgage. A. B., mortgagor, of .....county, Wisconsin, hereby mortgages to C. D., mortgagee, of .....county, Wisconsin, for the sum of .....dollars, the following tract of land in .....county,(here describe the premises).

This mortgage is given to secure the following, indebtedness (here state amount or amounts and form of indebtedness, whether on note, bond or otherwise, time or times when due, rate of interest, by and to whom payable, etc.)

The mortgagor argees to pay all taxes and assessments on said premises, and the sum of ....dollars attorney's fees in case of foreclosure thereof.

Witness the hand and seal of said mortgagor this ....day of .... 19...., in presence of

....(SEAL)
....(SEAL)

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 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.

Under the revision of 1898 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, or corporations not organized for profit, 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, and invalidates all contracts made by any such organization failing to comply with this rule, but such contracts may be enforcible against it or them. Every foreign corporation transacting business in this State shall annually between January 1st and April 1st, file with ghe secretary of state a report sworn to by the president, secretary, treasurer or general manager containing: (1) Name and location of principal office without this State and principal office or place of business within this state, if any. (2) Names and addresses of officers of said corporation, and name and address of agent or manager representing it within this State. (3) Nature of business done in this State during preceding year. (4) Capital stock in money, property, or services. (5) The proportion of the capital stock represented, in the State of Wisconsin. (6) That such corporation shall comply with all the laws of the State in regard to foreign corporations. In case of failure to file such report in the time above stated, such corporation shall pay $25 as penalty if filed before May 1st. In case report not filed then, the license to said corporation shall be void. The Wisconsin Railroad Commission has jurisdiction to enforce a stringent Blue Sky Law and no corporate secutities should be sold in this state before consulting local attorneys.

Courts. (See Actions.)

Days of Grace are abolished by statute.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

Depositions. The depositions of any witnesses residing within the state, may be taken, for use in the trial of an action, when such witness shall live more than thirty miles from the place of trial or hearing of the action, proceeding or matter in which his testimony is desired, or is beyond reach of the subpœna of the court, or when he shall be about to go out of the state, not intending to return in time for the trial or hearing, or when he is so sick, infirm or aged as to make it probable that he will not be able to attend at the trial or hearing, and for other grounds which are less important; such testimony may be taken by the party desiring to use the same, under commission, upon written or oral interrogatories, or it may be taken on ordinary notice without the commission.

Notice in writing shall be given to the adverse party, his attorney, or agent, that the deposition of the witness or witnesses named will be taken before the officer, naming him, at a time and place appointed therein, for one of the causes mentioned in the preceding paragraph, and three days' notice shall be given of the taking of such deposition, whether taken within or without the state, and additional time at the rate of one day for each three hundred miles, or fraction thereof, after the first ten miles from the place where the notice is served; provided, that one day's notice shall be sufficient to authorize the taking of depositions of additional witnesses desired to be examined, given during the course of the taking of any deposition.

A commission may issue from any court of record to any competent person or persons without the State o take the deposition of any such witness; no commission should i sue to any attorney who is the attorney for either party except by express stipulation; every objection to the competency of the witness, or to the propriety of any question put to him, or the admissibility of any testimony given by him may be made when the deposition is produced, in the same manner as if the witness were personally examined on the trial and without being noted upon the deposition unless the objection is to the form or order of a question, when the objection must be noted in the deposition before it is answered.

Descent and Distribution. Realty (except homestead, q. v.), undevised, descends to: 1. Children and their issue, if all are in the same degree; else by right of representation. 2. Widow or husband surviving 3. Parents, or survivor of them. 4 Brothers and sisters, or if deceased their issue by right of representation. 5. Other next of kin in equal degree. All realty owned in husband's life is subject to dower unless barred by wife's assent to deed, or by a jointure or provision by will accepted in lieu of it, and is defined to be "a one-third part of all her lands whereof her husband was seized of an estate of inheritance at any time during marriage", and all owned by wife at death and not devised by her or descended to issue by a former husband, is subject to a tenancy by the curtesy. Acceptance by widow of jointure or provision is presumed unless she gives notice of refusal within one year. A non-resident wife is dowable only of lands owned by husband at decease. Tenancy by curtesy is independent of issue: The husband holds the lands of which the wife died seized and not disposed of by her by her last will for his life as tenant thereof by the curtesy; provided, that if the wife, at her death, leaves issue by any former husband, to whom the estate might descend, such issue shall take the same discharged from the right of the surviving husband to hold the same as tenant by the curtesy. Personalty is distributed by rule—widow entitled to same share as a child; in a distribution of personalty the widow is entitled to the same share as a child when there is one child, and in all other cases one-third thereof. If no issue, all property goes to surviving husband or wife. A Wisconsin law imposing inheritance taxes has been declared constitutional.

Dower and Curtesy. (See Descent and Distribution.)

Executions from justice court may be stayed by bond from a court of record only by security on appeal. Levy and sale on personal property 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 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 Homesteads.) 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. Partners, however many, may take exemptions as individuals from joint assets. None of above property exempt from execution or attachment in action for purchase money of the same property If husband does not select exemptions, wife may.

False Pretenses may be committed by word or writing, and are punishable by fine or imprisonment.

Garnishment. (See Attachment.) This remedy lies 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 of testing an alledged 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. 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 examinations of garnishee allowed. Garnishment may be released by proper undertaking in lieu thereof.

Holidays. First day of January February 22nd, May 30th, July 4th, Labor Day, Thanksgiving Day, December 25th, primary election day in September, general election day in November, and in cities of the first class the day of holding any municipal election, and in every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices, is a half holiday. Whenever any of said days shall fall on Sunday the succeeding Monday shall be the legal holiday.

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 actual 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. (Chapter 269, Laws of 1901.) But it is subject to mechanic's and mortgage liens, created with the wife's assent, and it cannot 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.)

Husband and Wife. (See Married Women.)

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 or Actions.) Judgments in circuit court keep debts alive for twenty years, are liens on land when docketed for ten years, and bear legal interest. Judgments or foreclosure bear interest at rate stated in mortgage note, but shall not exceed the legal 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.

Liens. Mechanics have liens on personal property to the amount of repairs. Every innkeeper, hotel keeper, and every keeper of a boarding house or lodging house, whether individual, copartnership, or corporation, shall have a lien upon and may retain the possession of all the baggage and other effects brought into his inn, hotel, boarding house, or lodging house by any guest, whether the same is the individual property of such guest or under his control, for the proper charges owing such innkeeper. Livery stable keepers, garage keepers, and persons pasturing horses, cattle, etc., have liens on property in their possession. Consignees and factors and brokers have certain liens for advances made by them.

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, 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. Whenever any land or any interest therein has been or shall hereafter be taken, entered upon or appropriated for the purpose of its business by any railroad corporation, electric railroad or power company, telephone company or telegraph company witnout said corporation or company having first acquired title thereto by purchase or condemnation, as statute requires, the owner of such land, his heirs, assigns and legal representatives shall have and are hereby given the right to at any time within twenty years from date of such taking, entry or appropriation, sue for damages sustained, in the circuit court of the county in which land is situated. 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 two years from time of injury, describing it and grounds on which claim is made. The time is limited to one year in actions against railway companies for fires and injuries to animals. In case of injury to person upon highway, notice must be served within fifteen days in case of a city or village and thirty days in case of a county or town. No civil action may be commenced or prosecuted against any person in military service of the country during the present war, such exemption not to extend longer than three years after the mustering of such person into service, such time not to be taken as any part of time allowed in statutes of limitations.

Limited Partnerships. A uniform partnership act was passed by the Legislature of 1915.

Married Women. Women shall have the same rights and privileges under the law as men in the exercise of sufferage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children, and in all other respects. The various courts, executive and administrative officers shall construe the statutes where the masculine gender is used to include the feminine gender unless such construction will deny to females the special protection and privileges which they now enjoy for the general welfare. The courts, executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purposes of this statute.

Mechanics' Liens. Every person, firm or corporation, which, as principal contractor, architect, civil engineer, or surveyor, who performs any work or labor, or furnishes any material, plans or specifications in or about the erection, repair or removal of any dwelling house, building, bridge, wharf or dock, shall have a lien upon the interest of the owner thereof, and upon the land upon which it is situated, not exceeding forty acres, or if within the limits of a city or incorporated village, not exceeding one acre. Such lien shall be prior to any other lien which originates subsequent to the commencement of the construction, repairs or removal aforesaid, and shall also be prior to any unrecorded mortgage given before the commencement of such construction, repairs or removal.

Persons, firms or corporations, other than principal contractors, who perform any work or furnish any materials in the above cases, shall have a lien provided they shall give notice in writing within thirty days after performing the first work or labor, or furnishing the first materials to the owner of the property upon which such work is performed and materials furnished, by personal service on the owner, or his agent, or by letter addressed to such owner, or his agent, at the last post office address of such owner, or agent, with postage duly prepaid, to the effect that he has been employed to perform work or furnish materials, describing the real estate upon which the same is to be performed.

Every contractor, either principal or otherwise, at the time of the purchase of any materials, shall deliver to such materialmen a description of the real estate upon which the materials are to be used, and the name of the owner.

Every such firm, person or corporation, other than principal contractor, must within sixty days after the date of performing the last work, or furnishing the last materials, file in the office of the clerk of the Circuit Court of the county in which such real estate is situate, together with a copy of such notice, a claim for lien, setting forth his employment, with a statement of the labor and materials, and the amount owing, and that he claims a lien; and in all other cases not mentioned above, (this evidently means a principal contractor) the person or firm must, within six months from the date of the last charge of furnishing materials, file a claim for such lien in the office of the clerk of the Circuit Court of the county in which the lands affected thereby are situate, and must bring his action, and summons and complaint must be filed, within one year from such date, unless within thirty days next preceding the expiration of such year, the lien claimant shall make, and annex to the instrument on file an affidavit, setting forth the interest which lien claimant has by virtue of such lien. The effect of such affidavit shall not continue beyond one year from the time when such lien would otherwise cease to be valid. Other persons, as well as principal contractors, should likewise start their actions within one year from the date of the last charge for performing such work and labor or furnishing of materials.

Mortgages. (See Chattel Mortgages, Deeds.)

Negotiable Instruments. (See Promissory Notes and Bills.)

Probate Law. The jurisdiction of the county courts extends to probate of wills, granting of letters testamentary and of administration on the estate 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 extended 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 it 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 the holder in

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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, but in cases where immediate possession of such specific personalty is demanded, it must be on an affidavit by or for plaintiff showing his title or right of possession and defendant's wrongful detention or taking. 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. "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. By Chap. 549, Laws of 1911, the "uniform sales act" was adapted and went into effect January 1, 1912. It codifies the law on the question of sales, contracts, warrantees, rights of parties, and defines terms ordinarily used.

Supplementary Proceedings. (See Executions.)

Taxes are assessed as if May 1st, and must be paid by the first day of February, or certain interest will be incurred. If taxes are not paid on land not previously redeemed, the land is returned delinquent to the County Treasurer and sold on the second Tuesday in June next thereafter. The tax certificate, therefore, bears interest at the rate of 10 per cent per annum, and after three years, unless sooner redeemed, a deed is issued to the purchaser. As between the grantor and the grantee of land, where there are no express agreements as to which shall pay the taxes assessed thereon for the year in which the conveyance is made, if said land is conveyed on or before the first day of December, then the grantee shall pay the same, and if conveyed after that date, then the grantor shall pay the same.

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.

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.

Workmen's Compensation Act. This act was passed by the 1911 Legislature and amended in 1913. It takes away some of the common law defenses of the master and provides for payment of a certain amount of the servant's wages during disability, and also in case of death. It has been held constitutional, and though comparatively new, meets with favor.

SYNOPSIS OF

THE LAWS OF WYOMING

RELATING TO

BANKING AND COMMERCIAL USAGES

Prepared and Revised by GEORGE W. FERGUSON, Attorney at Law, Casper. (See Card in Attorneys' List.)

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. It is lawful for a notary public, who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by said corporation. Conveyances must be signed in the presence of one subscribing witness. Forms of certificate of acknowledgment may be found in Wyoming Compiled Statutes, 1920, Sec. 4600.

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. The uniform Declaratory Judgment Act adopted 1923 provides that in an action affecting the title or right of possession of real property, or in an action between husband and wife, the plaintiff at the time of filing the petition and the defendant at the time of filing his pleadings, when affirmative relief is claimed in such pleading, or at any time thereafter may file in the office of the county clerk where the property is situated a notice of the pendency of the action containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of the filing of such notice a subsequent purchaser or encumbrancer of the property affected thereby shall be deemed to have constructive notice of the pendency of the action.

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 county in which any part of the estate may be. 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, or to some competent person, at his place of residence or business to be specified in the notice, or be filed, in the office of the clerk of court, for allowance within ten months after the first publication of the notice. Uniform Foreign Probate Act adopted in 1921.

A married woman may act as an administratrix or as executrix. All claims must be presented to the administrator or executor or filed with the clerk of the court within ten months after the first publication of the notice of creditors.

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.

Arbitration. The law provides that all persons who have any controversy, except those relating to the possession or title to real estate, may submit such controversy to the arbitrament, or umpirage, of any person, or persons, to be mutually agreed upon by the parties, and they may make such submission a rule of any court of record in the State. The law further provides for process to compel the attendance of witnesses before the arbitrators, and for the enforcement of the award of the arbitrators when one is made.

Arrest and Bail. Arrest of the defendant in civil actions may be made on grounds very similar in character to those upon which a writ of attachment may be issued against the property of the defendant.

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 a 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 Supreme Court has held this procedure was suspended by the adoption of the bankruptcy act of 1898. However, the statute is still pursued in cases where the insolvent and all of his creditors unanimously agree to utilize its provisions.

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 cannot 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 to 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 of 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 civil actions before a justice of the peace involving an amount not to exceed $200 when affidavit is filed showing that claim is just and is founded on contract express or implied and is not secured attachment will issue. In civil actions in the District Court involving an amount not to exceed $500 a writ will issue on the same grounds.

Banks. All banks under supervision of State Examiner. Banks examined twice each year. Five or more persons required to organize. Capital not less than $25,000 in city less than 4,000 population; $50,000 in city of 4,000 to 6,000; $100,000 in city over 6,000. Fifty per cent of capital stock shall be paid in before bank shall begin business. Private banking prohibited. Directors five to nine. Can loan but 25 per cent on real estate at 50 per cent of cash or market value.

"Blue Sky" Law is now in force requiring that no speculative securities shall be sold in the State until a complete showing of facts has been filed with the Secretary of State and County Clerk of each County in which such speculative security shall be offered for sale. These facts include a statement of the assets and liabilities of the person or company making and issuing such securities: the amount of such securities prior thereto in interest or lien; if secured by mortgage or other lien, a copy thereof, and competent appraisal of the property covered thereby, and all prior lines thereon; a statement showing the gross and net earnings; a copy of the general or public prospectus; the names, addresses and selling territory in this state

or FRASER
ser.stlouisfed.org
eserve Bank of St. Louis

or any agents; the name and address of the promoter; all partners, directors, trustees and persons owing more than 10 per cent of the capital stock, the plan on which the enterprise is to be conducted if a co-partnership or association, a copy of the articles thereof, and if a corporation, a copy of its charter.

Every corporation or person guaranteeing any speculative securities shall file with the secretary of state and county clerks at the close of business June 30th and December 31st of each year, and at such other times as may be required by the secretary of state, a statement certified by a person having actual knowledge of the facts, of the financial condition, amount of property and liabilities of the person or corporation. Failure to comply with this provision within fifteen days after the above dates forfeits right to sell by virtue of the certificate of secretary of state.

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. Chattel mortgage may cover future advances where specific sum as ultimate amount to be secured, date prior to completion of advances and date on which last installment of indebtedness secured shall mature are stated. A mortgage may be given on crops growing or to be grown, provided crop matures summer and autumn after execution of mortgage.

Collaterals. There is no statute relating expressly to collaterals.

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 or existence (not to exceed fifty years), the number of shares of which the said stock shall consist, the number of directors 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. Within 30 days after filing articles, notice of its incorporation must be published three times in one newspaper of general circulation in this state giving all the above information. 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 directors for a corporation is not less than three nor more than nine, and the directors must be stockholders in the company. Any corporation, upon the assent of the holders of two-thirds of the outstanding stock thereof, may issue and dispose of preferred stock and stipulate that the holders of such stock shall be entitled to dividends not exceeding 7 per cent per annum in preference to all other stockholders. If the earnings available for dividends shall be equal to, or more than 7 per cent, all stock shall participate equally. Both foreign and domestic corporations must have resident agent under penalty for forfeiture of all its rights and franchises. Domestic and foreign corporations must file with the secretary annually on or before July 1, sworn statements of their condition. Domestic corporations may file such a statement by its secretary or assistant secretary giving the names and addresses of officers and directors, amount of capital stock outstanding, total amount authorized, and pay a fee of $5.00 if the capital is not more than $50,000. If more, the fee is $10.00 to $100,000; $100,000 to $500,000, $25.00; $500,000 to $1000,000, $50.00 and $50.00 for every million or fraction. The statement of a foreign corporation must be made out by its treasurer setting forth the portion of its capital, property and assets located in this State, the names of officers and directors and a $10.00 license is exacted if the property located in the State shall not exceed $100,000, in excess thereof at 10 cents per $1,000.

Filing fees of domestic corporations when formed: Capital stock not more than $50,000, $25; $50,000 to $100,000, $50; a 30 cents for each $1,000 of stock above $100,000.

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 of an appellate character. District court is held twice a year in each organized county except in the counties of Goshen, Platte, Niobrara, Sublette and Teton counties one term each, where but one term is held each year. Special terms may be called by the District Judge however, on being petitioned therefor by the Board of County Commissioners of the respective counties. Said court has full common law and chancery powers. It has also exclusive jurisdiction in all probate matters and the administration, settlements, and distribution of the estates of deceased persons. Justices of the peace have jurisdiction in civil actions where the amount in controversy, exclusive of costs, does not exceed $200.

Days of Grace 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.

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. If taken out of the state by an officer authorized to take the same, the certificate may be in the form authorized by the laws of the place where taken.

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: All of said estate up to the sum of $20,000, after the payment of debts, descends to wife, and the balance if any, 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 if such intestate have a husband or wife and no child nor descendants of any child, or parent, or brothers or sisters, then the whole thereof shall descend to and vest in the surviving husband or wife, as his or her absolute estate, subject to the payment of the debts of the intestate. Except in cases above enumerated the estate of any intestate descends and is distributed as follows: First, to his children surviving and the descendants of his children, who are dead (the descendants, collectively, taking the share which their parents would have taken if living). Second, if there be no children, nor their descendants, then to his father, mother, brothers and sisters, and to the descendants of brothers and sisters who are dead (the descendants, collectively, taking the share their parents would have taken if living), in equal parts. Third, if there be no children nor their descendants, nor father, mother, brothers, sisters, nor descendants of deceased brothers or sisters, nor husband nor wife, living, then to the grandfather, grandmother, uncles, aunts, and their descendants (the descendants taking, collectively, the share of their immediate ancestors), in equal parts.

Dower. Under the territorial law formerly in existence and which has never been repealed, dower was abolished, and since the admission of Wyoming as a state no law has been enacted on that subject.

Execution may issue immediately after judgment rendered, and is returnable in sixty days from a court of record, and thirty days when issued by a justice of the peace. Provision is made for a stay of execution in justices' courts, for a period of thirty days on a judgment not exceeding $50, exclusive of costs, or 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, except where debtor is adjudged a bankrupt either in voluntary or involuntary proceedings; library and instruments of professional man, $300; homestead actually occupied as such by head of family in country, of value of $2,500 but not exceeding 160 acres; in town, lot or lots in value, $2,500; 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.

Fraud. A judgment may be vacated for fraud practiced by the successful party in obtaining it. It is not a ground for a judgment debtor to be excused for not answering in an examination in regard to his property. It is also a ground for attachment.

Garnishment. The laws relating to attachment and garnishment are similar in character and there is no provision for garnishment except when ground for attachment exists, and a bond must be furnished, to obtain a garnishment in the same manner as to obtain an attachment. Garnishee process may be had in aid of execution after judgment, without such bond, and without affidavit, except such as may be necessary to lay the foundation for an order by the district judge for the examination of the judgment debtor or any person or corporation indebted to him.

Holidays. First day of January, 12th day of February, 22nd day of February, 30th day of May, 4th day of July, November 11th, 25th day of December, Thanksgiving Day, general election days, and the days designated by the Governor as Arbor Day and Labor Day, are legal holidays. If any of the first seven fall on Sunday, the following Monday is a legal holiday.

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.)

Interest. In the absence of express contract, all moneys, claims, or judgments draw interest at the rate of 7 per cent per annum. Any rate may be agreed upon in writing, not exceeding 10 per cent per annum. If any greater rate is agreed upon the lender forfeits all interest. Unsettled accounts draw interest after thirty days from the 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. Judgments may be revived by statutory proceedings.

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. Liens are now specifically granted for materials or labor for mines or oil wells but shall not affect any lien, encumbrance or mortgage upon the land or lease-hold interest at the time of the inception of the laborer or miner's lien.

Limitations of Suits. On contracts not in writing, eight years, upon specialty or agreement in writing, ten(10) years; on all foreign judgments, or contracts made or incurred before debtor becomes a resident, within five (5) years after he establishes residence in the State; recovery of lands, ten years. Revivor: Part payment or acknowledgment in writing. Limited partnerships.

Married Women. A married woman retains her property, both real and personal, may make a will, carry on business, sue and be sued, and retain her own earnings in the same manner as if sole. She may also vote and hold office. There is no right of dower under the state law.

Mortgages must be attested by one witness, acknowledged and recorded in the manner provided by law for the execution and recording of deeds, and are foreclosed by action at law, or by advertisement for six weeks. Real property sold under forcelosure of mortgage, either by decree of court or by advertisement, may be rendeemed in six months by mortgagor 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. A mortgage or

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

other specific lien on real property shall take precedence over the lien of taxes levied against any other property than the property subject to such liens.

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. The legislature of 1917 passed the Uniform Warehouse Receipt Act.

Notes and Bills of Exchange are subject to a state law which substantially enacts the law merchant. Any bank or trust company engaged in business in Wyoming receiving for collection or deposit any negotiable instrument may send such instrument for collection directly to the bank on which it is drawn or made payable. The failure of the bank to which the item is sent for collection to account for the proceeds thereof because of insolvency or otherwise does not render the forwarding bank liable to the depositor. provided it used due diligence in making the collection

The maker, endorser, guarantor or surety of any negotiable instrument deposited for credit or for collection is liable to the bank until actual final payment is received, except in case of want of due diligence on the part of the bank.

Partnerships. The legislature of 1917 passed the Uniform Partnership Act.

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 aceptor, as the case may be, the refusal to accept or pay, or the linability of the drawee to give a binding acceptance, and in case of refusal the reason assigned, if any, and finally protesting against all the parties to be charged.

Replevin. The action for replevin lies both in the district court and in the justice court for the purpose of obtaining the possession of specific oersonal 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 acction.

Sales. The legislature of 1917 adopted the Uniform Sales Act.

Taxes. Fifty per cent of all taxes become due and payable on the first day of September in each year and the tax payer should pay that amount of his taxes after that time and before the 10th of November following. The remaining 50 per cent becomes due and payable March 1st of the following year and delinquent May 10th. Taxes delinquent November 10th and May 10th draw 15 per cent interest. Taxes upon real estate are made a perpetual lien thereon against all persons or corporations except the United States and the State of Wyoming, and taxes due from any person or corporation on personal property shall be a lien on real estate owned by such person or corporation, subject, however, to all prior existing valid liens. 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 date of the sale by payment to the county treasurer the amount for which the same was sold with 3 per cent on the same, and 12 per cent interest per annum on the whole amount from the date of sale and the amount of all taxes accrued after such sale with 9 per cent interest per annum on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption is made.

Property engaged and used in the manufacture of beet sugar or any of the products of sugar beets in Wyoming is exempt from taxation for ten years during the actual use thereof.

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, not 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. No married person shall deprive his or her husband or wife of over one-half of his or her property remaining after the payment of his or her debts, and it shall be optional with the surviving spouse, after the death of the testator or testatrix, to accept the condition of such will, or one-half of the estate, real and personal, of the deceased spouse. However, if decedent leave children surviving by previous marriage, or their descendants, and none by present spouse, disposal may be made by will to others than surviving spouse of three-fourths of the property.

Nuncupative wills are not valid. Olographic or holographic wills are not required to be witnessed.

SYNOPSIS OF

THE LAWS OF ALBERTA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by DAVID S. MOFFAT, K. C.
Calgary, Alta., Barrister, Solicitor and Notary.
(See Card in Attorneys' List.)

By chapters 41 and 42 of the acts of parliament 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.

Administration of Decedent's Estate. Probate of wills or letters of administration are granted by the district court in the judicial district where the deceased resided when he died; in case residence was outside the Province at the time of death, 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 copy thereof deposited with the clerk of the district court together with a certificate of the court granting them that they are wholly unrevoked and of of full force and effect, they may under the direction of the judge, be sealed with the seal of the district court, and thereupon will have the same force and effect as if granted by that court. In the case of American Probates and letters of administration, it is necessary to make a substantially new application for ancillary probate or letters of administration. A judge has power, in his discretion, to order sale of an infant's estate. Real property descends as chattels, and becomes vested in the executor or administrator as personal property. Widows must be made fully aware of their rights with regard to their deceased husband's property before his will is proved.

Affidavits. In matters in Court affidavits must be instituted in the cause or matter and must be drawn up in the first person and must state the name of the deponent in full, his description and true place of abode. Affidavits for use in Alberta when sworn outside the Province and in Great Britain and Ireland or any British possession, before a Judge of a Court of Record or before the mayor or chief magistrate of any city, borough or town under the common seal of such city, borough or town; or before a 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, a judge of any court of record or of supreme jurisdiction or before a notary public certified under his hand and official seal, or before commissioner authorized by the laws of Alberta to take affidavits in such foreign country, or before the mayor or chief magistrate of any city, borough or town corporate under the common seal of such city, borough or town.

Every person administering oaths, shall express the date when and the place where the affidavit is taken. All interlineations, alterations or erasures whether in the jurat or body of the affidavit shall be authenticated by the initials of the officer taking the affidavit. Accounts, extracts, documents, etc., referred to in the affidavit must be referred to as exhibits and must be marked and signed and sealed by the officer taking the affidavit. An official administering an oath must state below his signature the date when his term of office expires.

As to affidavits of executions see Deeds, etc., below.

Rules of Court, 1914, Sections 413–428, Alberta Evidence Act; Revised Statutes of Alberta, 1922, Chap. 87.

Aliens. Aliens may acquire, hold and dispose of real property as effectually as natural born British subjects. They may become naturalized upon proof of residence in Canada for one year immediately preceding the application and previous residence in Canada or His Majesty's Dominions for a period of five years within the last eight years before application or five years in the service of the Crown during the eight years preceding the application, upon complying with the procedure laid down in the Naturalization Act.

Arrest. There is no provision made for arrest for debt.

Assignments and Fraudulent Preferences. Assignment or transfer of property by any person at a 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 one or more of them or to or for a creditor with intent to give such creditor a preference over the others or over any one or more of them or which have that effect is void. If the assignment is attacked within sixty days after the date thereof it is sufficient to show that the assignment had the effect of preferring such creditor without proving the intent. But any assignment, sale or payment made in the course of trade to innocent purchasers or parties is valid. Sales or transfers of property made by insolvents who have been adjudged bankrupts under the Bankruptcy Act are governed by the provisions of that Act. (See title "Bankruptcy" below.)

Attachment of Debts. Debts due or accruing due to a defendant or judgment debtor may be attached by garnishee summons either before or after the signing of judgment, upon affidavit of the plaintiff, his solicitor or agent, setting out the facts required. The clerk issues a garnishee summons.

After service upon the garnishee all debts due or accruing due are bound and must be paid into Court or to the Sheriff.

See Rules of Court, 1914.

Attachment of Goods. Property not exempt from seizure under execution may be attached after the commencement of an action wherein the claim is for the recovery of a debt of $100.00 or upwards.

An ex parte application grounded upon affidavit made by the plaintiff or by his agent having a personal knowledge of the matter, stating from what cause the claim arose and the amount thereof and that the deponent has good reason to believe (giving reasons therefor) that the debtor is about to or has absconded from Alberta leaving personal property liable to seizure under execution or has attempted to remove such personal property out of Alberta or to sell or dispose of the same with intent to defraud his creditors generally or the plaintiff in particular, or keeps concealed to avoid service of process; and stating also that the deponent verily believes that 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 is about to or has absconded or has attempted to remove his personal property out of Alberta or to sell or dispose of the same or keeps concealed to avoid service or process, must be made to the Judge who, is satisfied with the material submitted directs the Clerk of the Court to issue writ of attachment directed to the Sheriff authorizing him to attach and keep all the personal property of the defendant.

Where the debtor has actually absconded or is about to abscond from the Province leaving no wife or family behind no property of such debtor 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 action. A creditor who attaches a debt shall be deemed to do so for the benefit of all creditors of the debtor as well as for himself.

Vide Rules of Court, 1914. Sec. 666, sqq.
Statutes, 1910, Cap. IV. Secs. 4 and 5.

or FRASER
er.stlouisfed:org
eserve Bank of St. Louis

Bankruptcy. An Act relating to bankruptcy which affects the whole of Canada was adopted by the Parliament of Canada on the 7th of July, 1919, and is effective from the 1st of July, 1920. Under this Act the creditor or creditors having claim or claims aggregating $500 may petition the Court alleging that the debtor has committed an act of bankruptcy within six months before the presentation of the petition. An act of bankruptcy may consist of making an assignment for the benefit of creditors, making a fradulent conveyance of property, absconding or having an execution against him unsatisfied for a specified time or exhibiting a statement showing insolvency or making a bulk sale of his goods without complying with the Bulk Sales Act. Or if he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts or if he ceases to meet his liabilities generally as they become due. No farmer or wage earner may be forced into bankruptcy nor may any person be forced into bankruptcy by reason of any debt which was contracted before the first of July, 1920. If the petitioner proves the debt and act of bankruptcy, the Court may declare the debtor a bankrupt and make a receiving order and appoint a custodian of the estate of the bankrupt. The Court may before making the order appoint an interim receiver of the property of the debtor. Any debtor may make a voluntary assignment to the Official Receiver for the locality in which he resides who appoints a custodian from among the creditors. A trustee in bankruptcy is appointed by the creditors at their first meeting and thereupon becomes vested with all the property and estate of the debtor. After paying costs, wages and certain preferred claims the balance is distributed among the creditors pari passu. A receiving order or voluntary assignment does not prevent the creditor from realizing on his security. Secured creditors must value their security and trustee has right to take it over at that valuation or order a sale of the security. On a bankrupt being declared, all executions, garnishments, attachments, general assignments of book debts and various other transactions all mentioned in the Act are void as against the Trustee in Bankruptcy. After the order for bankruptcy has been made, the Court may sanction a composition or extension agreement approved of by the majority of the creditors. The bankrupt may under certain circumstances, having complied with the Act, apply for and obtain a discharge which releases him from all his obligations except certain limited kinds of claims. Every conveyance or transfer of property or charge thereon, every payment made or obligation incurred by any insolvent person in favor of any creditor with a view to giving such creditor a preference over the other creditors, if the person making the same is adjudged a bankrupt within three months after the date of making or paying as above or makes an authorized assignment within three months shall be deemed to be fraudulent and void as against the trustee in bankruptcy.

Banks. The subject of Banks is one which by the provisions of the British North America Act is expressly reserved for the Dominion Parliament. The Legislature of the Province has no power to deal therewith. The legislation on the subject is contained in the Bank Act of 1923, being Statutes of Canada, 13–14 George V, Chap. 32. 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. All checks, bills, and notes must bear 2-cent stamps. The Bills of Exchange Act, 1890. See Revised Statutes of Canada, 1906. Chap. 119.

Bulk Sales. It is the duty of each purchaser of a stock in bulk before paying to him any part of the purchase price, except a sum not exceeding $50 on account thereof or giving any promissory notes or any security for the purchase price or part thereof, or executing any transfer, conveyance or encumbrance of such property, to demand to receive from the vendor a written statement verified by the statutory declaration of a vendor or his duly authorized agent, giving the names and addresses of all the creditors of the vendor, the amount of the indebtedness or liability due to each of the said creditors according to a form prescribed. If such a statement is furnished and duly verified as provided, no preference or priority shall be obtained by any creditor of the vendor in respect of such stock in bulk or the proceeds of such sale thereof by attachment, garnishment proceedings, contract or otherwise.

At the time of completion of every sale in bulk, one of the following provisions must also be complied with.

(a) The claims of all the creditors of the vendor as shown by the statement shall be paid in full, or
(b) The vendor shall produce and deliver to the purchaser a written waiver of the provisions of the act other than the provision requiring the delivery of the duly verified statement previously mentioned from creditors of the vendor representing not less than 60 per cent in number and amount, of the claims exceeding $50 as shown by the said statement, which waiver shall be according to a form prescribed by the act, or
(c) The vendor shall produce and deliver to the purchaser the written consent thereto of creditors of the vendor not less than 60 per cent in number and amount of the claims exceeding $50 as shown by the statement previously referred to.

Where a sale in bulk is made with the written consent of the creditors of the vendor, the entire proceeds of such sale shall be paid to a trustee. When the proceeds of sale are paid to the trustee he shall be a trustee for the general benefit of the creditors of the vendor and shall distribute the proceeds of such sale pro rata among the creditors of the vendor.

Every sale in bulk, in respect of which the provisions of this act have not been complied with, shall be deemed to be fraudulent and void as against the creditors of the vendor and every payment made on account of the purchase price or delivery or any note or notes or other security therefor and every transfer, conveyance and encumbrance of the property by the purchaser shall be fraudulent and void as between the purchaser and the creditors of the vendor

If the purchaser has received or taken possession of the stock without the provisions of the Act being complied with he shall be personally liable to account to creditors of the vendor for all monies, security or property realized or taken by him from, out of or on account of the sale or disposition of the stock or any part thereof. An action to have the sale declared void must be brought within six months of the date of the sale. This Act applies only to sales by traders and merchants defined as follows:

(a) Persons who as their ostensible occupation or part thereof, buy or sell goods, wares or merchandise ordinarily the subject of trade and commerce.
(b) Commission merchants.
(c) Manufacturers.

Caveats on Land. Any person claiming to be interested under any will, settlement or trust deed, or any instrument or transfer or transmission or under an unregistered instrument or under an execution where the execution creditor seeks to affect land in which the execution debtor is interested beneficially, but the title to which is registered in the name of some other person or otherwise howsoever on any land, mortgage or incumbrance, may cause to be filed on his behalf with the registrar a caveat in form W in the schedule to this act against the registration of any person as transferee or owner of, or of any instrument affecting, such estate or interest, unless such instrument be expressed to be subject to the claim of the caveator. Registration by way of caveat shall have the same effect as to priority as the registration of any instrument under the Act. The Registrar may allow the withdrawal of caveat and registration in lieu thereof of the instrument under which caveat filed if such instrument may be registered under the Act.

Land Titles Act, Revised Statutes of Alberta, 1922. Chap. 133.

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. or where the mortgagee is a corporation, by an officer thereof or by any person duly authorized by resolution of the directors, and if the head office of the corporation is outside the Province by any general or local manager or secretary or agent within the Province or any person duly authorized by the directors and such affidavit shall state that the deponent is aware of the circumstances and has a personal knowledge of the facts deposed to stating that the mortgage is given in good faith and the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned and that it was executed in good faith and for the express purpose of securing the payment of money due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against creditors of the mortgagor or preventing the creditors of such mortgagor from obtaining the payment of any claim. They must be registered within thirty days from the date of execution with the registration clerk of the district in which the goods are situated and must be renewed within two years from the date of registration and renewed thereafter every year.

In case of goods being removed into a new registration district, a certified copy of the mortgage, affidavits, etc. must be registered with the clerk of the new district within sixty days of such removal.

Similar provisions also exist respecting chattel mortgages to secure endorsements and assignment of book debts and transfers.

Bills of Sale Act See also Seizure and Sale.

Provisions exist with regard to registration of chattel mortages on growing crops to secure advances for seed grain or other necessaries are contained in other acts recently passed.

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.

Provision is also made for the appointment of an official administrator.

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.)

Creditors must be advertised for by executors and administrators of deceased persons pursuant to the directions of the Probate Judge.

Conditional Sales. No sale or bailment of goods to the value of $15.00 or upwards, conditioned that the right of property or of possession shall remain in the seller or bailor, is good as against a purchaser or mortgagee from the buyer or bailee, or against judgments, executions, or attachments against the purchaser or bailee, unless the sale or bailment is in writing and signed by the buyer, bailee, or their agent, and containing a description of the goods such that they may be known. The writing or a true copy thereof, accompanied by an affidavit of the seller, bailor, or his agent, stating that the writing truly sets out the agreement and that agreement is bona fide and not for the purpose of protecting the goods, must be registered in the registration district where the buyer or bailee resides within 30 days after actual delivery of the goods. If the goods are delivered in a district other than that in which the buyer or bailee resides registration must be made also within the same time in the district in which the goods are delivered. In the case of a subsequent permanent removal, registration must be made in the district into which the goods have been removed within 60 days of such removal. A seller or bailor repossessing must hold the goods for 20 days and give 5 days' notice of sale. The registration remains effective only for two years unless within the 30 days next preceding the expiration of the two years, a statement of the amount still due for principal and interest under such sale and all payments made on account thereof, is registered in the office of the Registration Clerk where the goods are situated, with an affidavit of the vendor or one of them or the Assignee of the Vendor or their agents duly authorized for that purpose that such statement is true and that the sale is not kept on foot for any fraudulent purpose or to defeat, delay or prejudice the creditors of the purchase Similar statements must be similarly registered within the 30 days next preceding the expiration of one year from the filing of the above statement and so on from year to year. If these renewal statements are not so filed the property or right of possession in the goods shall be deemed to have passed to the Purchaser. The seller may before delivery to the buyer permanently and legibly mark on goods sold that they are his property and if this is done then the removal of the goods from one district to another need not be followed by registration in the new district.

(See Seizure and Sale.)

Corporations. Incorporation of a company for any lawful purpose to which the authority of the Legislative Assembly of the Province extends may be obtained under the Companies Act of the Province by any number of persons not less than three in number.

Application is made by filing with the Registrar Memorandum of Association signed by the applicants, being not less than three in number, and otherwise complying with the Act

Companies may be limited by shares, by guarantee, or may be incorporated as unlimited companies. Where limited by shares shareholders are only liable for unpaid balance on the shares subscribed for. Mining Companies may be incorporated under special provisions relating to such and if so provided in charter shareholders are not liable for more than the amount paid by them on shares. Companies may also be incorporated under the Dominion Companies Act.

By the Corporations Taxation Act, Revised Statutes of Alberta, 1922, Chap. 29, certain corporations are subject to special taxes to be paid to the Province.

No Foreign Company having gain for its object is allowed to carry on any part of its business in the Province until it is duly registered and cannot sue for any debt contracted until registered and is further liable to a fine, subject however to the proviso that the taking of orders by travellers for goods, wares or mercnandise to be subsequently imported in to the Province to fill such orders, or the buying or selling of such goods, wares or merchandise by correspondence, if the company has no resident agent or representative and no warehouse, office or place of business in the Province, is not to be deemed to be carrying on business within the meaning of the Foreign Companies Act, Foreign Companies may register under the statute relating to such Companies on paying the necessary fees and otherwise complying with the provisions of the Ordinance. Any such company must appoint an attorney resident within the Province.

Insurance Companies and Banking Companies must be incorporated under the acts of the Parliament of the Dominion of Canada.

Creditors, Relief of. There is no priority among execution creditors of any debtor. The Sheriff realizing moneys under execution must hold same for thirty days and in case of an absconding debtor for two months, and all creditors filing claims in manner prescribed within the times mentioned share any moneys in the hands of the Sheriff. Special provisions are made for filing of claims under particular circumstances.

Creditors' Relief Act, Revised Statutes of Alberta, 1922, Chap. 88.

Courts. There are two courts; supreme and district. The judges of the supreme court have jurisdiction in any judicial district in the Province. The judges of the district court only have jurisdiction in their respective judicial districts, but an action begun in one district may be transferred to another. The district court has jurisdiction in all cases, actions, matters, suits or proceedings, whether of debt, covenant, contract or damage or involving the validity of any will or settlement or in relation to land or any legal or equitable interest therein, or in actions seeking equitable relief or for a declaratory judgment, or to establish the right of a creditor, to rank upon an insolvent estate, and generally in all matters which may be made the subject of a claim for relief whether legal or equitable, or to enforce any right whether legal or equitable where the debt, damage claim or demand does not exceed $600. The district court has also jurisdiction in all probate matters. The supreme court has jurisdiction in all other matters. There is an Appellate Division of the Supreme Court which decides all appeals from Supreme and District courts.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 Province, shall be made before the inspector of land titles offices, registrar or deputy registrar of the district in which the land is situate, or a judge, or a stipendiary magistrate, notary public, commissioner for taking affidavits, or a justice of the peace in and for the Province; if made in any province of Canada, before a judge or any court of record, and commissioner for taking affidavits in such province for use in any court of record in Alberta, or before any notary public under his official seal. In Great Britain or Ireland before a judge of the supreme court of judicature in Great Britain or Ireland, or of the court of sessions or judiciary court in Scotland, or a judge of any county, courts within his county, or the mayor of any city or incorporated town under its common seal, or before any commissioner in Great Britain or Ireland for taking affidavits for use in Alberta, or a notary public under his official seal; or if made in any British posesssion 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 court may be taken out of the Province under commission. Application for same is made by way of Notice of Motion before a Judge or Master in Chambers.

Descent. If the Intestate leaves a widow and any child or children or descendants of any child, the widow shall, if only one child has been born to the marriage, take a half interest in the property of the deceased and the child shall take the other half. If more than one child has been born to the marriage, the widow takes one-third and the children or surviving child shall take two-thirds.

If the intestate leaves no issue his widow shall take all provided she has not left him and lived in adultery after leaving him, or at any time lived in adultery which has not been condoned.

The husband of a married woman is entitled to the whole of her estate upon her dying intestate without issue unless he has left her and is living in adultery or has at any time lived in adultery which has not been condoned.

The father and mother of any person dying intestate leaving no wife or children take all the intestate's property in equal shares; if either is dead the surviving parent takes all.

In default of issue or parents the deceased's brothers and sisters take his property in equal shares, children of a deceased brother or sister take the share of their parent, and in default of all of these the property goes to the next of kin to the deceased in equal shares.

In the distribution of any personal property of any woman dying intestate, illegitimate children of the same rank as though they were legitimate and the mother of any illegitimate child dying intestate leaving no wife, husband or chld shall take all the personal property of the child.

The University of Alberta takes the property of all persons dying intestate who leave no next of kin

Distress. (See Seizure and Sale.)

Dower. A Dower Act was passed by the Provincial Legislature on April 5, 1917. It provides that any disposition inter vivos of a man's homestead, made during the life of the wife is void, unless made with the consent in writing of the wife. The wife must acknowledge before a Notary Public or other officer authorized to take affidavits in connection with the execution of documents required to be registered, apart from her husband that she has executed the instrument of her own free will and accord and without any compulsion on the part of her husband. Every disposition by Will of a married man is subject and postponed to an Estate for life of his wife surviving him. The term "homestead" in a City, Town, or Village means the house and lots, not exceeding four lots, on which the residence of the owner is situate and "elsewhere" means the land on which the residence of the owner is situate, consisting of not more than 160 acres. The Act, however, does not affect any disposition of property provided for in writing before the passing of the Act. Where a man and wife are residing separate and apart the wife's consent may be dispensed with in the discretion of a judge on good cause shown, and where at the time of her husband's death the wife is living apart from him under circumstances disentitling her to alimony, she takes no life estate or benefit under the Act.

Evidence. (See Testimony.)

Executions. Executions may be issued immediately on signing judgment unless the judge fixes a period for payment and except in cases for foreclosure or specific performance, but in such cases a clerk's certificate of the judgment may be filed in the Land Titles office preventing transfers. No execution may be issued in foreclosure actions until the land is sold. Absolute foreclosure is equivalent to satisfaction of the mortgage. Every writ of execution shall be issued against both goods and lands of the debtor and shall remain in force so long as the judgment on which it is issued remains in force unless otherwise provided by any statute for the purpose of such statute.

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. 3. The necessary food for the defendant's family during six months, which may include grain and flour or vegetables and meal; either prepared for use or on foot. 4. Four oxen, horses or mules, or any four of them, six cows, six sheep, four 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 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 160 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 incumbrance 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 $3,000.

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.

Infants. An official known as the Official Guardian is the guardian of the estates of all infants who have no other guardian. And no application in which an infant's person or estate is conserved may be proceeded with except after notice to the Official Guardian. Husband and wife have equal rights as to custody of children. In case of dispute the welfare of the infant is practically only thus considered.

Interest. Five per cent is the legal rate of interest if no other amount is agreed upon. Parties may stipulate for the payment of any rate of interest with the exception of Money Lenders who are not allowed to charge a rate exceeding 12 per cent on loans under $500. Except as to mortgages on real estate, whenever any interest by the terms of any contract is made payable at a rate per day, week or month or for any period less than a year, no interest exceeding the rate of 5 per cent per annum shall be recoverable unless the contract contains an expressed statement of the yearly rate or percentage to which such other rate is equivalent.

Judgments. Judgments remain in force for twelve years from the dates thereof.

To be binding on land, a writ of execution issued on the judgment must be registered in the Land Titles Office

Renewals of such writs must be registered in the Land Titles Office within six years from the date of registration of the writ.

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-five days within which to file statement of his account in the Land Titles Office and every lien in respect of which an affidavit has been filed against the title of the land shall be deemed to have lapsed after the expiration of sixty days after service upon the lien holder of a notice provided for by the Mechanics Lien Act unless before the expiration of the said thirty days the lien holder shall have taken proceedings in Court to enforce his lien and shall have filed in the Land Titles Office certificate of lis pendens.

Limitation of Actions. All actions for recovery of merchants accounts, bills, notes, and all actions of debt grounded upon any contract without specialty shall be commenced and sued within six years after the cause of such action arise, contracts under seal twenty years, judgments twelve years, except foreign judgments, for which the period of limitation is six years if the debtor appeared in or attorned to the original court, or was resident within its jurisdiction in which such foreign judgment was obtained. If he did not appear or attorn, or was not resident within the jurisdiction of such court, then such foeign judgment is really of no value, and claim in Alberta should be based upon the original cause of action, and the period of limitation will be governed accordingly.

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 may carry on business separate from her husband as if she were a femme sole. Her husband is not entitled to any estate by curtesy in her real property.

(See also Dower and Infants.)

Mortgages. Mortgages are executed in the form prescribed by the Land Titles Acts (Torrens' System). A mortgage does not operate as a transfer of land, but after default of payment the mortgagee can institute foreclosure proceedings which are carried on by direction of court, or in the office of the Registrar. Mortgages must be duly registered under the provision of the Land Titles Act, and take priority in order of registration. All transferees of title of land subject to mortgage are impliedly bound to pay the amount of the mortgage unless in the transfer they expressly negative the implied covenant to pay. Proceedings on mortgages are now fixed by an amendment to the Land Titles Act in 1915, such amendment being Section 63a of the said Act. If wife has dower in land proposed to be mortgaged she must bar her dower or mortgage is subject to her life estate or dower.

Partnership. All persons associated in partnership for trading, manufacturing, contracting or mining purposes in the Province must file in the office of the Registration Clerk of the District declaration in writing signed by the various members and giving particulars required by act. Registration must be made within six months after the commencement of the partnership.

Every person engaged in business for any of the purposes mentioned and who is not in partnership with anyone but trades under a name indicating a plurality of members shall file declaration setting out particulars.

The act provides for penalty for non-registration and also provides for the filing and publication of declaration of dissolution of partnership.

Proof of Claims. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary, particulars shall be stated in the pleadings provided that if the particulars be of debt, expenses or damages and exceed three folios the fact must be so stated, with reference to full particulars delivered or to be delivered. (Rules of Court, 1914.) 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 within time fixed by court of, or action stands dismissed. The security usually ordered is a deposit of $200 or more or a bond with two resident responsible sureties in the sum of $200.

Protest. It is not necessary in this Province to protest Inland Bills. It is only necessary to protest a foreign bill, that is, one which is not or does not on its face purport to be both drawn and payable within Canada. But as a Notarial protest is a convenient form of proof, the practice of protesting bills has, as a rule, been adopted in this Province. If bill is not protested, Notice of Dishonour must be given to the drawer and each endorser not later than the juridical or business day next following dishonour of bill. This notice may be either in writing or by personal communication in any terms which identify the bill and intimate that it has been dishonoured. Protest must be made by a notary public or in absence of a notary then by a justice of the peace. 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.

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. Transfers, mortgages, assignments, and other instruments, to be in substance in forms given by acts, 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. The plaintiff claiming that personal property was unlawfully taken and is unlawfully detained may obtain an order of replevin. Such order may be obtained from the Clerk on praecipe

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

grounded on affidavit of the plaintiff or his agent stating description and value of the property and the right to possession and that the property was unlawfully taken or fraudulently got out of his possession within two months next before making the affidavit, etc.

Such order may also be obtained from a Judge on motion. Before the Sheriff replevies the plaintiff must give a bond to him in such sum as is prescribed by order or if no sum is prescribed in double the value of the property.

Rules of Court, 1914.

Review of Judgment. Appeal lies to the Appellate Division of the Supreme Court. Notice must be given within twenty days after formal judgment or order has been signed and entered. Leave to appeal is necessary where the amount in question on appeal is less than $200. Execution is not stayed unless specially ordered by the Judge. (See Rules of Court, 1914.)

Seizure and Sale. Every distress or seizure under any lien, attornment clause in real estate mortgage or agreement for sale, conditional sale, chattel mortgage, bill of sale, lien note, hire receipt, ware-house receipt or any other extra judicial process shall be made, levied and executed by the Sheriff, Sheriff's Bailiff or some person authorized in writing by the Sheriff, Assistant or Deputy Sheriff and by no other person whatsoever. No sale may be made without first obtaining leave of the Court.

Statute of Frauds. The fourth section of the Imperial Statute of Frauds is in force and 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."

By the sale of goods ordinance a contract for the sale of goods of the value of $50.00 or upward 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

No action shall be brought whereby to charge any person either by way of 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. Or unless the person sought to be charged as the result of the services of an agent has effected a sale or lease of lands and has either executed a transfer or lease or entered into an agreement for sale entitling the purchaser to possession and has delivered the agreement or transfer to the purchaser.

Taxes. Taxes are a lien on land. When they are in arrears for a year the Municipality files a caveat against the property and at the expiration of one year from the date of the filing of such caveat, if the taxes are still unpaid, the land may be transferred to the Municipality and within one year from such transfer must be offered for public sale. In the event of the land not being sold it shall be deemed to have been finally acquired by the Municipality one year after the date of its first being advertised for sale by auction. Redemption may be made at any time before sale or final acquisition by the Municipality on payment of all arrears of taxes and costs.

Taxes may be distrained for if not paid within a certain period after notice requiring them to be paid has been mailed. In the case of a Village, Municipal District of Local Improvement District, thirty days is the time allowed, and in the case of towns, if the debtor is a resident, fourteen days, and if a non-resident, one month is allowed.

Taxes may also be recovered by suit as a debt.

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 verified by clerk, admissible in any cause or matter to the same extent as the original would be. The provisions of the Canada Evidence Act apply to all criminal proceedings and to all civil proceedings and other matters respecting which the Parliament of Canada has jurisdiction in this behalf. The Canada Evidence Act also applied to the taking of evidence relating to proceedings in Courts out of Canada. (See Rules of Court, 1914.)

Alberta Evidence Act, 1910. Canada Evidence Act.

Trust Deeds to Secure Debentures. Provisions as to registration the same as in the case of chattel mortgages, q. v., except that renewal is effected by filing with the registrar of companies the by-laws authorizing the issue of debentures or a copy thereof certified under the hand of the president, or vice-president and the secretary and verified by an affidavit of the secretary, and a copy of the trust deed certified and verified as aforesaid.

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. The two witnesses shall attest and subscribe in the presence of the testator 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 or the wife or husband of such witness can derive any benefit therefrom. Wills are admitted to probate in the court of the proper (district) upon petition being filed after lapse of seven days from death of testator.

Workmen's Compensation. A system of government insurance of workmen at expense of the employers is in force.

SYNOPSIS OF

THE LAWS OF BRITISH COLUMBIA

RELATING TO

BANKING AND COMMERCIAL USAGES

Prepared by MACKENZIE MATHESON, Barrister, Vancouver.
(See Card in Attorneys' List.)

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, a commissioner for affidavits or a notary public. 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. 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 and that the company is authorized to carry on business in the Province.

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 or county 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.

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. 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 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; or before any British consul, vice-consul, or consular agent, exercising his functions in a foreign place. (See Evidence.)

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.

Arrest. In actions in the supreme or county court, the defendant may be arrested in the first instance on a writ of capias, where the claim is for debt or damages amounting to $100 or upward. Such writ issues on a judge's order, upon the plaintiff filing an affidavit showing a cause of action against the defendant to the amount of $100 or upward, or that he has sustained damages to that amount, and that there is probable cause for believing that the defendant is about to quit the Province unless forthwith apprehended.

Attachment. (See Courts, Garnishee.)

Bankruptcy. (See Bankruptcy under New Brunswick Laws.)

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.

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

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

also be filed at the same time, stating that the instrument is given and taken bona fide, 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. 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.

Bulk Sales. (See Sale of Goods in Bulk.)

Companies may be incorporated by special act of the legislature, or (except railway and insurance companies) under the general "companies act, 1921," in the latter case by the execution (by not less than three persons) and filing of a memorandum of association, according to the requirements of the act. 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. 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, and is incapable of enforcing any contract relating to such business.

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. Companies may be wound up under the Canadian Winding-up Act (Revised Statutes of Canada).

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 (20) days in the office of the county court registrar of the district in which the goods are delivered, and also filed in the like office in the district in which the buyer resides. Like documents covering goods delivered outside the Province must also be registered within twenty (20) days after their removal to this Province, otherwise they are void as against subsequent purchasers or mortgagees. A copy of the receipt-rate, lien order or hire-receipt must also be left within 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, Security for, must be given in supreme and county 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, and $50 in the county court.

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 surpreme 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. 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 $2,500; 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. 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 court of appeal 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. An appeal lies to the court of appeal from any order or judgment of a judge. An appeal lies from the judgment of the court of appeal 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.)

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 and mortgages executed by incorporated companies must also be registered with the Registrar of Joint Stock Companies within twenty-one days after execution. 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 cannot 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.)

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. Undevised real estate is subject to the widow's dower. (See Dower.)

Dower. 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. 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.

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. There is no execution against lands, but where a judgment has been recovered exceeding $100, the judgment may be registered against lands of the defendants, and a judge may order the same sold by the sheriff to satisfy the judgment. 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.

Executors and Administrators. (See Administration, Probate. Succession, Duties.)

Exemptions. The goods and chattels of any debtor, at his option, to the value of $500, are exempt from forced seizure of 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.)

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. 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, sign a memorandum of the sale.

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 $40, 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.

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.

Insolvency. This is regulated by the "Bankruptcy Act"—a Federal Statute having force throughout all the Province. Insolvent debtors may make an assignment for the general benefit of creditors to an authorized trustee. Provision is also made to enforce such an assignment by court order. No person who has become a bankrupt under the Act can afterwards carry on business until discharged from bankruptcy by the court.

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, cannot lawfully recover more than 7 per cent on loans and money lenders are prohibited from charging more than twelve per cent on loans of less than $500. Unpaid bills of exchange and promissory notes bear interest at 5 per cent from maturity, whether so expressed or not.

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 to 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.

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.)

Liens, Mechanics'. Unless otherwise agreed in writing, every contractor, sub-contractor, and laborer doing or causing work to the amount of $20 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 nas 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-one days after registration of the lien. Persons claiming liens for materials must give notice of their claim before delivery or within ten days after delivery.

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.

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. Foreign Limitations. An action cannot 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, 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.

Mining Laws. Mineral Quartz Mines. Every person or corporation, before engaging in prospecting or mining for any minerals or ore,

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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. The foundation of the right of a free miner to 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 by 1,500 feet, but fractional claims may be located. 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. 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. 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 $100 per year. If coal is discovered the licensee may obtain a lease for five years. 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.

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. 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.

Probate. (See Administration, Courts, Deceased Persons, Descent, Succession, Duties, Wills.)

Promissory Notes. (See Bills of Exchange.)

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.

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.

Sale of Goods in Bulk. Purchasers of stocks-in-trade of goods in bulk must, before making any payment or giving any promissory note, etc., on account, obtain from the vendor an affidavit showing the names and addresses of the vendor's creditors, with amounts of their claims, or else a written waiver of such requirement, signed by the creditors; otherwise the sale is void as against such creditors if attacked within 60 days.

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 1 per cent to 10 per cent, depending on the value of the estate and the degree of relationship of the inheritors.

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 $5 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 certain exemptions.

Municipal Taxes. Cities and other municipalities levy taxes 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, but municipalities may exempt improvements in whole or in part, and, in Vancouver, they have been wholly exempt from taxation for several years. 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. 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).

Transfer of Corporation Stock must be effected in the manner fixed by the by-laws of the corporation.

Wages. (See Assignments, Executions, Infants, Liens.)

Wills must be in writing, and signed at the foot by the testator, or by some other person in his presence and by his direction; and such signature must be made and acknowledged by the testator in the presence of two or more witnesses, present at the same time, who shall attest and subscribe in the presence of the testator. No form of attestation is necessary. Any property or interest in property may be disposed of by will, and a will speaks from the time of the testator's death, not from its execution. Infants cannot make a valid will. 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. 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. RICHARDS, SWEATMAN, FILLMORE & RILEY, 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, a 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 rising 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, justice of the peace, 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. Affidavit, 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 or 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 affidavit 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 of Book Debts. Every assignment by a trader of his existing or future book debts must be in writing and accompanied by an affidavit of execution and affidavit of bona fides by the assignee and registered within thirty days from the date thereof in the County Court Judicial District where the trader carries on business, otherwise such assignment shall be absolutely null and void as against creditors of the trader, subsequent purchasers, mortgagees or a trustee in bankruptcy. It is not necessary, however, to register an assignment of book debts due at the date of the assignment from specified debtors or of debts accuring due under specified contracts. Such assignment must be renewed within thirty days preceding the expiration of the two years from the date of filing, by filing a statement showing that the assignment is still held as security in accordance with the original terms thereof and an Affidavit of the Assignee that the statement is true and that the assignment has not been kept alive for any fraudulent purpose.

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. 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.

Bankruptcy. The Bankruptcy Act (Dominion Statute) which came into effect July, 1920, introduces voluntary as well as compulsory bankruptcy. A debtor may be compulsorily adjudged bankrupt where he absconds, makes a fraudulent preference or conveyance or leaves an execution unsatisfied or no goods to be found by the Sheriff or removes his goods with intent to defraud his creditors, or if he ceases to meet his liabilities generally as they become due. The debt of the petitioning creditor must be over $500.00. The Court appoints a custodian at the hearing of the Petition whose duties are the same as where an authorized assignment is made. An insolvent debtor whose liabilities exceed $500.00 may make an authorized assignment to the Official Receiver in Bankruptcy in the Division he resides. The Official Receiver then appoints from his creditors a custodian who takes charge of the debtor's assets until the first meeting of creditors. The custodian must advertise the assignment or the Receiving Order, as the case may be, in the Canada Gazette and a local newspaper and send out notice to all creditors of the same and convene a meeting within twenty days from the date of such assignment or Receiving Order. At the meeting of creditors the custodian retires and a trustee is appointed by the creditors, upon whom devolves the winding-up of the debtor's affairs. Claims are to be proven by affidavit and must be filed with the custodian prior to the meeting of creditors to entitle the creditor to vote at this meeting. Inspectors are appointed at the first meeting of creditors who advise the Trustee on matters of importance. All questions discussed at meetings of creditors are decided by the majority of votes, and for such purpose the votes of creditors shall be capitulated as follows:

All claims up to $200, one vote; over $200 and under $500, two votes; over $500 and under $1,000, three votes; for every additional $1,000 or fraction thereof, one vote; the compulsory features of this Act do not apply to farmers.

Bills of Sale and Chattel Mortgages. Sales and Mortgages of personal property not accompanied by immediate delivery and not followed by an actual and continual change of possession are absolutely void as against the creditors of the vendor and mortgagor and

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

against subsequent purchasers or mortgagees in good faith for value, unless the bill of sale or mortgage be filed with the Clerk of the County Court in the Judicial Division where the goods and chattels are situated within thirty days from the execution thereof accompanied by an affidavit of execution and an affidavit of the vendee or mortgagee showing the good faith of the transaction. Such mortgage must be renewed within thirty days preceding the expiration of two years from the date of filing by filing a statement showing the amount still owing and setting forth that the Mortgage is not kept on foot for any fraudulent purpose.

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. Minors are persons under the age of 21 years. 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 or unless some memorandum in writing of such agreement is signed by the parties to be charged or their agent. Wagering contracts are void. For beverage purposes spirits or wine may be imported and sold by the Government Liquor Control Commission only. Beer may be sold by any licensed brewer to the holder of a permit issued by the Government Liquor Control Commission.

The Bankruptcy Act provides that every conveyance made by any insolvent person with a view to giving the creditor a preference shall, if an assignment or Receiving Order is made within three months, be deemed fraudulent and void against the Trustee, and if any such conveyance, etc. has the effect of giving a preference it shall be presumed prima facie to have been made with such view whether or not made voluntarily or under 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 jurisdiction both at law and in equity. A court of appeal has been constituted to dispose of appeals from the court of king's bench and other courts in the Province. 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 $800 in contract and $800 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 appeal, when the amount in dispute is not less than $20 and not more than $50; and to the full 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 life-time of the husband. From and after September 1, 1918 every disposition by act (inter vivos) of the home or homestead (not exceeding 320 acres) of any married man shall be null and void unless made with the consent in writing of the wife. Such consent must be acknowledged before certain officers as set out in the "Dower Act." There are special provisions covering case of wife having lived apart from husband for two years or more. A husband is given a similar interest in his wife's home or homestead. 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. The Registrar General has established a rule that no typewritten documents are to be received in any Land Titles Office in Manitoba. In very unusual cases he will give his fiat allowing the registration of such an instrument. All deeds, conveyances and transfers of land together with the affidavit of execution must be in accordance with the forms outlined by the Registry Act, the Real Property Act and the Dower Act, otherwise same will not be accepted for registration.

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 king's bench may order the attendance of witnesses, production of document, and give directions in accordance with the tenor of 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 between males and females, or between children of half-blood or whole-blood, 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 failing 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. The divorce laws in England as they existed on the 15th day of July, 1870 are in force in Manitoba and the jurisdiction to administer the same is vested in the Court of King's Bench. The husband must be domiciled in Manitoba before he or his wife can present a Petition to the Court for a divorce.

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 or a county court bailiff 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. Four 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 or 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 one hundred and sixty 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. 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 $30 per month in case of unmarried men and widow or widowers without dependent children, $60 per month in case of married man. 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. Money lenders cannot contract for a higher rate of interest than 12 per cent on loans of $500.00 and under. Interest is computed on judgments from date of entry at 5 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. No action or suit can be brought upon a judgment recovered upon a judgment. (See Executions.)

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 or material provided a statement of the claim verified by affidavit, is filed in local registry office within thirty days of completion of work, or of furnishing of material.

Lien Notes and Conditional Sales. There are no provisions for registration of Lien Notes or Conditional Sale Agreements in Manitoba.

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 provides that an action to recover land or rent must be commenced within ten years from the time at which the right to bring the action first accrued and that no arrears of rent or interest in respect of money charged upon the land shall be recovered by action except within six years after it has become due or after an 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. (See "Deeds.")

Moratorium Act. No action for possession, foreclosure, or sale of any land under any agreement or encumbrance and no action on any covenant, for payment contained therein shall be taken until some interest, taxes, or insurance premium is overdue. The defendant may however pay up the arrears of such interest, taxes and insurance premium and the cost of the action and have the action stayed.

By the 1923 amendment to the Act, principal owing under agreements or mortgages shall be payable as follows:

To the extent of 10 per cent of the principal money on the 31st of December, 1923,

To the extent of 25 per cent in all of the principal money on the 31st of December, 1924.

To the extent of 50 per cent in all of the principal money on the 31st of December, 1925, and altogether on the 31st of December, 1926.

N. B. The Moratorium Act does not apply to agreements, mortgages or encumbrances made or entered into after July 31, 1914.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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. "Dower Act" applies after September 1, 1918 (See "Deeds.") Tacking prohibited by statute. Foreclosure or sale proceedings taken in the king's bench, where land is under Old System of Titles and through the Land Titles Office where land is under the Torrens System, there is no redemption after final order for foreclosure or sale. For Chattel Mortgages see paragraph re bills of Sale and Chattel Mortgages.

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 except where discounted with or drawn on a Bank.

Probate Law. The Province has six surrogate courts: of the eastern judicial district, of the central judicial district, of the western judicial district, and of southern Manitoba, of the Dauphin Judicial District and Northern Judicial District. The seats of the courts are Winnipeg, Portage la Prairie, Brandon, Morden, Dauphin and Minnedosa, respectively. Grants of probate made in any other province in Canada, the United Kingdom or any British province may be re-sealed in this Province by producing the grant of probate or administration, or exemplification thereof, purporting to be under the seal of the court by which the same has been granted, and the necessary affidavits. If probate or administration has been granted in any other country than Canada, the United Kingdom, or a British province, ancillary probate or administration must be taken out. Ancillary probate or administration may be obtained 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. Executors are not required to give security, but an administrator must furnish, usually, two securities, 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.

Sale of Merchandise in Bulk. The Bulk Sales Act, Chap. 5 Statutes of Manitoba 11 George V, prohibits the sale of goods, wares or merchandise in bulk for cash or on credit unless 60 per cent in number and amount of the creditors of the vendor consent to the same in writing. Any sale made without such consent is under this Act fraudulent and void against the creditors of the vendor. Action must be brought, however, to declare void any sale for failure to comply with the provisions thereof, within sixty days from the date of such sale.

There is, however, a provision that in the event of the written consent not being obtained, the purchaser can pay the money over to an Official Assignee or to a Trust Company for distribution pro rata amongst the creditors of the vendor.

The act applies to sales by traders and merchants. These classes are given a very wide interpretation by the Act and include commission merchants and manufacturers.

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 one year, or upward, by the treasurer of the municipality within which the lands lie, and may be redeemed at any time within one year from date of sales upon payment of the sum paid by purchaser, with 10 per cent interest if redeemed within one year. If not so redeemed purchaser may, within one year from the expiry of the said one year from the date of sale, 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. Land in the city of Winnipeg may be sold when any taxes are unpaid for more than one year after the end of the year in which the rate was struck and may be redeemed within one year on payment of penalty of 10% and costs or within two years on payment of further 10%. The Tax Purchaser may apply for Title within one year from the expiry of two years from the date of sale.

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 Canada Permanent Trust Company, Imperial Canadian Trust Company, Montreal Trust Company, National Trust Company, Northern Trusts Company, Royal Trust Company, Standard Trusts Company, Toronto General Trust Corporation, Traders Trust Company, Union Trust Company, Western Trust Company and Winnipeg Trustee Company of Canada.

The War Relief Act. No action or proceeding (except for debts for necessaries incurred after the Act came into force or contracts made after the party became entitled to the protection of the Act) can be brought against any person in receipt fo a pension from the Dominion of Canada or Great Britain by reason of War disability arising from the late War, nor against the widow or widowed Mother or any member of the family of any person killed or who died or continues to be disabled by disability sustained while in active service in the said War if dependent on such person and if such person was a resident of Manitoba who proceeded overseas in the Canadian Expeditionary Force or left Manitoba and joined the army of His Majesty or any of His Allies. After the 31st day of December, 1927, the protection afforded to pensioners and dependents shall apply only to the Homestead. Under certain circumstances, upon the application to the Judge of the Court of King's Bench or County Court Judge, an action may be commenced by a Vendor or Mortgagee, etc.

No action shall be brought at any time hereafter in the Civil Courts to recover a Judgment upon the personal covenant to pay contained in any Mortgage or Agreement of Purchase of land against a resident (his wife or dependents) of Manitoba who proceeded overseas in the Canadian Expeditionary Force or who left Manitoba and joined the Army of His Majesty or any of His Allies.

The running of all Statutes of Limitation of actions or proceedings in favor of all persons for whose benefit the Act is passed, is suspended during the period from the 1st day of August, 1914, to the Repeal of the Act, or from the time of the first accruing of the rights of action, respectively, to the said Repeal.

Wills. Every person over the age of 21 years, of sound mind, may dispose of his real and personal estate by will. Subsequent marriage operates as a revocation. A married woman may dispose of her separate estate by will without the consent of her husband, and may alter or revoke the same in like manner as if she were a femme sole. Her will must be executed in like manner as other wills. Every will must be in writing, and every will other than a 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 including a minor 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

Revised by TEED & TEED, Barristers, St. John, N. B.
(See Card in Attorneys' List.)

Absconding Debtors. If any person severally, or persons jointly indebted in the sum of $50.00 depart from or keep concealed within the Province, with the intent to defraud creditors, a creditor may make affidavit of the departure or concealment, which must be verified by affidavit of two witnesses, of whom the creditor may be one, stating reason for their belief of such departure or concealment.

The Judge may thereon issue a warrant to one or more sheriffs directing them to seize all the estate, real and personal of such party. Such warrant shall have priority over all other processes not actually executed. If the debtor does not return within sixty days and satisfy his creditors, a meeting of the creditors, is called, and the property may be sold and distributed to the creditors, who prove their claim by affidavit.

Acknowledgments. Before the registry of any deed, conveyance, mortgage, certificate of discharge or 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; and 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, and 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 ten 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 one month, 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 the 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.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 affidavit 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 $2.00 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 attachments as for contempt of court. (See Courts.)

Bankruptcy. An Act relating to Bankruptcy which affects the whole of Canada was adopted by the Parliament of Canada effective from the 1st of July, A. D. 1920. A bankruptcy may be voluntary or involuntary; a voluntary one is made by an assignment to an authorized trustee, an involuntary one may be brought about by a creditor or creditors having claim or claims aggregating $500.00 petitioning the Court alleging that the debtor has committed an act of bankruptcy within six months before the presentation of the petition. An act of Bankruptcy may consist of making an assignment for the benefit of creditors, making a fraudulent conveyance of property, absconding or having an execution against him unsatisfied for a specified time or exhibiting a statement showing insolvency or if he fails to meet his liabilities generally as they fall due. No farmer or wage earner may be forced into bankruptcy nor may any person be forced into bankruptcy by reason of any debt which was contracted before the first of July, 1920. On the petition being presented if the petitioner proves the debt owing to him and proves the act of bankruptcy the Court may make an order declaring the debtor a bankrupt. Any debtor no matter what his occupation nor when his debts were contracted may voluntarily become a bankrupt by making an assignment to a trustee in bankruptcy. The trustee in bankruptcy either in case an order of Bankruptcy is made or in case the debtor voluntarily assigns to him, takes over all the property of the bankrupt and disposes of it, and pays the creditors pro rata, except those entitled to security which are not void by the Act and except three months wages to the employees who rank prior to other creditors. On the bankruptcy being declared all executions, garnishments, attachments, general assignments of book debts and various other transactions all mentioned in the Act are void as against the trustee in bankruptcy. After the order for bankruptcy has been made the Court may sanction a composition or extension agreement approved of by the majority of the creditors. The bankrupt may under certain circumstances, having complied with the Act, apply for and obtain a discharge which releases him from all his obligations except certain limited kinds of claims.

Chattel Mortgages and Bills of Sale. Every mortgage or conveyance of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change of possession of the property mortgaged is void as against subsequent purchasers or creditors, unless the same or a true copy thereof is filed with the registrar in the county in which the maker resides, or if non-resident of the Province in the county in which the things are, within thirty days from the execution thereof, with an affidavit of the subscribing witness of the due execution and an affidavit of the mortgagee or his agent that the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, and that it was executed in good faith and for the express purpose of securing payment and not for the purpose of protecting the property mentioned therein against the creditors of the mortgagor, or of preventing them from obtaining payment of any claims against him. Future advances may be secured where agreement therefor is recited in the mortgage. Every sale of goods and chattels not accompanied by an immediate delivery and followed by an actual and continued change of possession, must be in writing and accompanied by an affidavit of a subscribing witness thereto of the due execution and an affidavit of the bargainee or agent authorized in writing to take the conveyance, a copy of which authority shall be attached to the conveyance that the sale is bona fide and for good consideration, and not for the purpose of holding or enabling the bargainee to hold the goods against the creditors of the bargainor, and the conveyance must be registered as in the case of a chattel mortgage.

Conditional Sale of Chattels. Receipt notes, hire receipts, and orders for chattels given by bailee of chattels where the condition of the bailment is such that the possession passes without ownership being acquired until payment of the purchase money, shall only be valid against subsequent purchasers for value without notice in good faith when 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 fifteen 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. Three or more persons may obtain letters patent for corporation 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-juridical 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.)

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 lands in which his widow would have had dower had he recovered possession thereof, she shall be entitled to dower out of the same if such dower be sued within the period within which such right of action or entry may be enforced.

Executions. In the supreme and county courts execution may issue upon signing final judgment and bind property, real and personal, from the time it is delivered to the sheriff to be executed. In inferior Courts may issue against goods and chattels or the body. Memorials of 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 renewed with like effect. (See Assignments in Trust.)

Exemptions. All wearing apparel, bedding, kitchen utensils, and tools of trade or calling; food to the value of $40 and to the value of $150 and also one horse, one cow and certain other stock are exempt from seizure under execution.

Garnishee. A judgment creditor for an amount exceeding $80 where the debt exclusive of costs, exceeds $40, 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 Years', Good Friday, Easter Monday, the 24th day of May, 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 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 court bind lands of the debtor from the time execution is delivered to the sheriff to be executed. (See Executions and Assignments in Trust.)

Liens. Mechanics, machinists, builders, laborers, and all other persons doing work upon or furnishing materials to be used in the construction, alteration or repair of any building, or erection or erecting, furnishing or placing any machinery at any time in, upon or in connection with any building, erection or mine, have a lien for the price of the work, machinery or materials upon the building or mine and the lands occupied thereby to the extent of the interest of the employer or purchaser therein. The lien of wage earners is for wages not exceeding thirty days or a balance equal to wages for thirty days. A claim for lien specifying particularly the name and residence of claimant and employer or purchaser, the time at which the work was done, the nature of the work and materials, description of the property and period of credit, if any, verified by affidavit, may be registered. Claim for wages must be registered within thirty days after last day of labor and other claims may be registered before the commencement or during the progress of the work or within thirty days from completion thereof, or from supplying or placing machinery. Registered liens good for only ninety days, unless proceedings are taken to realize within that time, in which case lien may be continued.

Limitations. Actions on judgments of courts of record, recognizance bonds or other specialties, or for recovery of real property, must be brought within twenty years. In assault, battery, wounding, imprisonment, or words, within two years. All other personal actions within six years. Adverse possession against the Crown must be sixty years to bar title of Crown.

Married Women. The married woman's property act 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 femme 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 creditors and bona-fide purchasers must be recorded. Are foreclosed by proceedings in chancery 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.

Sale of Goods. Law relating to this subject codified by Stature called Sale of Goods Act, largely declaratory of English Common Law and Commercial practice and following very closely the English Sale of Goods Act.

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, to be carried out in New Brunswick, or property going to father, mother, husband, wife, child, grandchild, brother, sister, daughter-in-law or son-in-law, where the estate does not exceed $25,000, or to any legacy to any one person not exceeding $200. Save as above estates are subject to a duty as follows: (1) Estate above $25,000, passing to father, mother, husband, wife, child, son-in-law or daughter-in-law, $1.25 on each $100 up to $50,000, and $2.50 on each $100 of excess up to $100,000 with an increasing tax on larger estates up to 10 per cent on estates of over $1,000,000. (2) Where more than $10,000, passes to grandfather, grandmother or other lineal ancestor, except father or mother, or to a brother or sister or 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

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

or sister, or to a grandchild or other descendant of the deceased, except a son or daughter, 5 per cent, increasing in large estates to 12 ½ per cent. 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, increasing in large estates to 20 per cent. 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.

No foreign executor or administrator shall assign or transfer any debentures, bonds, stocks, or shares of any bank or other corporation, whatsoever, having its head office in New Brunswick standing in the name of the deceased person, or in trust for him, which are subject to succession duty until such duty is paid or until security is given as required by the Act and any such bank or corporation allowing a transfer of any debentures, bonds, stocks, or shares contrary to this section shall be liable for such duty.

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) Winding up under Provincial act. (2) Decease. (3) Seizure under execution. (4) Seizure under absconding debtors' act. (5) Foreclosure of railway trust mortgage. (See also Liens and Bankruptcy.)

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.

Workmen's Compensation. If personal injury is caused to a workman by accident arising out of and in the course of the employment, a Provincial Board called the Workmen's Compensation Board provide and pay compensation, in case of injury causing death where there are parties in Canada dependent on the earnings. If incapacitated scale of compensation is calculated on the remuneration the workman was receiving at the time of injury equal to 55 per cent of the diminution in his earning capacity. If total disability ensues not less than six dollars per week nor more than $68.75 per month.

SYNOPSIS OF

THE LAWS OF NOVA SCOTIA

RELATING TO

BANKING AND COMMERCIAL USAGES

Prepared and Revised by ALFRED WHITMAN, Esq., Barrister, 8 Prince St., 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 regulated by "The Judicature Act," which is practically the same as the English judicature act. The judges have made rules thereunder practically the same as the English rules of practice and procedure. Plaintiff resident without the Province may be compelled to give security for costs, either by payment into court, or by bond approved by defendant, or a judge.

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. If the deceased leaves no known living relative in the province, or any who can be readily communicated with, administration may be granted to the Attorney-General.

Any trust company authorised by law to administer the estate of deceased persons, may be appointed administrator upon the consent in writing of the persons entitled in priority to take out letters of administration.

Affidavits. Affidavits may be sworn abroad for use in Nova Scotia, before any judge of a court of record, British consul, a vice-consul exercising his functions, notary public, certified under his hand and official seal, mayor or chief magistrate of any incorporated town, certified under the common seal of such 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 of corporations to convey and transfer the same.

Arbitration is regulated by "The Arbitration Act," which provides for arbitration under submission and for references under order of the supreme court: A submission, unless a contrary intention is expressed therein, is irrevocable, except by leave of the supreme court or a judge thereof: The report of an official or special referee may be adopted wholly or partially by the court or a judge.

Arrest before Final Judgment. 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.

Arrest under Judgment. Under "The Collection Act" a creditor may obtain a warrant for the arrest and imprisonment of the debtor, upon an application to an examiner, supported by an affidavit of himself, his solicitor, or agent, setting forth the judgment and date of the recovery thereof, the amount due on the judgment, the deponent's belief that the debtor is about to leave the Province, and without stating the ground for such belief. Where an order to pay by installments has been made against a debtor, and such debtor fails to make any of the payments directed to be made by such order, execution may issue for his arrest, upon an affidavit setting forth such order and the non-compliance therewith. Any person arrested under such execution may apply for relief under the provisions of "The Indigent Debtors Act."

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 sheriff shall levy for the amount indorsed on the writ with $120 for probable costs, in actions to recover $80 and upwards, and $28 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 appraisement. Any person against whom judgment is recovered as an absent or absconding debtor, and who has not appeared in the action, is entitled to a rehearing at any time within three years of the date of judgment.

Bank. The legislation respecting Banks and Banking is contained in the act of the Parliament of Canada (Chapter 32 of the Statutes of Canada, A. D. 1923). The Provisions of the act apply to the seventeen banks mentioned in Schedule "A" to the act, and to every bank incorporated after the first day of January A. D. 1922. The act continues the Charters or Acts of Incorporation of said banks until the first day of July, A. D. 1933, subject however to forfeiture by reason of insolvency or non-performance of the conditions of the Act or by any other reason.

The provisions for the incorporation of Banks are largely similar to the provisions of Law respecting the formation of other Corporations. A Bank cannot 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 share-holders 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, and a copy sent to the Minister of Finance. Banks are audited annually by duly qualified chartered accountants who may be required to report in such audit to the Minister. 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 $5.00 or for any sum which is not a multiple of $5.00. 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 banks are payable at par throughout the Dominion of Canada.

Banks are authorized to hold real estate such as is required for their own use, but all other real estate howsoever acquired must be sold within seven years from the date of the acquisition thereof. Banks are also authorized to make advances in aid of building ships, to take security therefor, to lend money upon the security of standing timber, and upon the security of natural products or live or dead stock of a wholesale dealer, and to take warehouse receipts as collateral security and similar business. Banks are also authorized to lend money to farmers upon the security of their threshed grain grown upon the farm. 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. 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 negotiable. 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. 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 instruments are dealt with by statute: 1. Bills of sale given to secure the grantee, (a) re-payment 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, the bailor or bargainor, until the payment in full of the hire, rental, or price agreed upon by future payments or otherwise. These must be evidenced by instrument or instruments in writing, showing the terms of such agreement, and be signed by the person to whom such personal chattels are hired, the lessee, bailee, bargainee, or his agent thereunto duly authorized in writing, and shall have written or printed therein the postoffice address of the person letting to hire, lessor, bailor or bargainor, and a true copy or true copies of such instrument or instruments shall be filed within ten days from delivery of the chattels accompanied by an affidavit of bona fides otherwise the agreement that the property, or lien for the price, as the case may be, shall remain in the person letting to hire, etc., shall be null and void as against creditors, purchasers and mortgagees of the person hiring the lessee, bargainee, etc.

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. All corporations, whether domestic or foreign, must hold a certificate

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

of registration before they can legally do or carry on in Nova Scotia any part of their business. 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.

Foreign corporations are required to file an annual statement showing amount of capital, situation of head office, under what laws it was incorporated, list of directors, and nature of business empowered to carry on and name and address of resident agent within province, and heavy penalties are provided for default.

Costs. Costs in action are in the discretion of the judge, but generally are allowed to successful litigant.

Courts. The supreme court, county court, city courts and municipal courts have a civil and criminal jurisdiction. The first two have an appellate jurisdiction. The judges of the supreme court, consisting of a chief justice and six associate judges, hold circuit courts throughout the province. The county court is divided into districts and each judge holds court in his own district. The jurisdiction of the supreme court in actions for debt or liquidated demand is from $100 upward; of the county court from $20 to $1,000.

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. Deeds within the Province may be proved upon the oath of a subscribing witness to the execution thereof taken before the registrar of deeds, 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 before any of the said functionaries 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 ineffective 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 a witness 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 widow in lieu of dower, and the other half to his father and mother in equal shares, or if only one of his parents is living at the time of the intestate's death, one-half of his real property shall go to that one and if there is no widow, the whole shall go in equal shares to his father and mother, and if only one of them is living at the time of the intestate's death, the whole shall go to that one. 3. If no issue or father, or mother, one-half to widow, other half in equal shares to brothers, and sisters, and the children of any deceased brother or sister, by right of representation; if no issue, widow, father, or mother, whole to brother and sister, and children of deceased brother and sister, by right of representation. 4. If none of foregoing in equal shares to his next of kin in equal degree, excepting where 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 who is more remote, but in no case shall representatives be admitted among collaterals after brother's and sister's children. If intestate leaves no issue, father, mother, brother or sister nor child of deceased brother or sister whole of property to widow. 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.

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.

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. Wife has dower in equitable estates of which her husband died beneficially seized.

Execution. Writ of execution (fieri facias) may issue upon a judgment or order for the payment of any moneys or transfer of real or personal property at any time within six years from the recovery of judgment or the date of the order, 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. After six years have elapsed party must get leave to issue execution. 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 binds real estate of the debtor after it has been registered in the registry of deeds for the county or district in which said lands lie; and after the period of one year from the date of registration the judgment creditor may order execution to be levied on said lands.

Exemptions. The necessary wearing apparel, beds, bedding and bedsteads of the debtor and his family, one stove and pipe therefor, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, six knives, six forks, six plates, six teacups, six saucers, one shovel, one table, six chairs, one milk-jug, one teapot, six spoons, one spinning wheel, one weaving loom, one sewing machine, if in ordinary domestic use, ten volumes of religious books, one water bucket, one axe, one saw, and such fishing nets as are in common use, the value of such nets not to exceed $20; all necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor, and his family for thirty days, and not exceeding in value the sum of $40, one cow, two sheep, and one hog and food therefor for thirty days, tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of $30.

Frauds. 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 for 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. No contract for the sale of goods for the price of $40 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 garnisheed, nor debts due from the government.

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

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 5 per cent.

Judgments. (See Executions.)

Jurisdiction. (See Courts.)

Limitations on all contracts not under seal, six years; judgments and contracts under seal, twenty years. No arrears of dower, nor damages on account of such arrear, shall be recovered or obtained by any action or proceeding for a longer period than six years next before the commencement of such action, or suit; and no arrears of rent, or interest, or money charged on or payable out of land, or in respect to any legacy, or any damages therefor, shall be recovered after six years from date when due, or from acknowledgment of the same in writing.

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 declaration, may carry on separate business. Married women having separate estate may sue and be sued as femme sole.

Married Women's Deeds Act. For deed of married woman to be valid the husband must join therein or show his concurrence in a separate instrument and the married woman acknowledges that the deed was her free act and deed and was executed freely and voluntarily, without fear, threat, or compulsion of, from, or by the husband. Such acknowledgment may be made before any of the functionaries mentioned under "Deeds" for proving the execution thereof.

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. Includes person carrying on business by himself under any name other than his own. No person shall carry on business as a partner until a declaration has been filed by the partner and a certificate of registration issued. New declaration to be filed on change of membership of firm. Unregistered partnership cannot maintain a suit in the courts. "The Partnership Act" of 1911 deals with the nature of partnerships, the relations of partners to persons dealing with them, and to one another, and also with the dissolution of partnership and its consequences. This act is copied from the English partnership act and is about of the same effect.

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 also be registered in the same registry office as the conveyance is registered in.

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 subscribe the Will in the presence of the testator, but no form of attestation shall be necessary. Executors are competent witnesses. Wills of minors are invalid. If a subscribing witness is a beneficiary under the will, the will will not be void on that account but the gift to the witness shall be void if there are not at least two other attesting witnesses without him.

or FRAS
er.stlouisfed.org
eserve Bank of St. Louis

SYNOPSIS OF

THE LAWS OF ONTARIO

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by SAMUEL M. MEHR, Barrister and Solicitor, Canadian Pacific Bldg., Toronto, Ontario. (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 or are expressly reserved to the people.

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 and is termed a specially indorsed writ of summons. A defendant, if served with process 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.

Where the writ is specially endorsed the defendant shall with his appearance file an affidavit that he has a good defense and showing the nature of the defense. This may be treated as a statement of defense by the plaintiff, and pleadings may be closed, by serving the defendant within five days with a twenty-one days' notice of trial If the defendant is not served with last mentioned notice of trial then he may deliver a statement of defense witnin ten days after his appearance; otherwise his affidavit of merits shall stand as his defense.

Where the defendant appears to a specially endorsed writ and files his affidavit as above, the plaintiff may cross examine on such affidavit and move for summary judgment, and if the court sees that the facts and circumstances on which the defendant relies in his affidavit of merits afford no answer to the plaintiff's claim, summary judgment may be given for the plaintiff.

Where writ is not specially endorsed, (called a "general writ of summons") and defendant fails to appear, plaintiff may sign interlocutory judgment, directing an assessment of damages, or a reference. Each party, after the defense is delivered, may orally examine the other under oath, before the trial, touching the matters in question, and may by notice require the other within ten days to make discovery, or disclosure on oath in writing of the documents which are or have ever been in his possession or power, relating to any matters in question in the action.

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 $120, or $200 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 $200; provided that in case of an unsettled account, the whole account does not exceed $1,000. 3. Claims for debt or money demand not exceeding $400 exclusive of interest where the amount, or original amount, is ascertained by the signature of the defendant or person whom, as executor or administrator he represents, or for the balance of an amount not exceeding $400 which amount is so ascertained; or the balance of an amount so ascertained which did not exceed $800 and the plaintiff abandons the excess over $400. An amount is not so ascertained where other and extrinsic evidence is necessary beyond the production of a document and proof of the signature to it. The Division Court has also jurisdiction in certain combinations of classes in class three. No fees are recoverable in the division court as a general rule, only court costs, which are not large. Sometimes a small Counsel Fee is allowed to successful party. County courts have jurisdiction in 1. All personal actions where sum claimed does not exceed $500. 2. Actions arising out of contract, expressed or implied, where the sum claimed does not exceed $800. 3. Recovery of land or damages for trespass thereon where its value does not exceed $500. 4. Partnership accounts where stock or capital is not over $2,000. 5. Legacies not above $500 out of an estate not exceeding $2,000. 6. Claims on mortgages where sum claimed does not exceed $500. 7. Actions for redemption or suitable relief where sum does not exceed $500. They can not try: 1. Title to land where the value of the land is over $500. 2. The validity of any devise or bequest over $200 where the estate is over $2,000. 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 courts, the Supreme Court of 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.)

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 and fees on claims vary with the amount of the claim. In division courts no fees at all except in some cases small Counsel Fees are allowed, only court disbursements, and, therefore a litigant in that court, even if successful, has to bear his own attorney fees. The tendency of legislation has been to extend the jurisdiction of the inferior courts.

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, or in which he leaves property. 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. The administrator must reside in the province.

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.

If made before the mayor of a city or town they must be certified under the common seal of the municipality.

Agreements where Possession Passes without Ownership, otherwise termed **Conditional Sales.** In case of an agreement for the sale or transfer of goods of any kind, possession to pass but not ownership, any such provision is void against creditors or subsequent transferees, without notice, unless the agreement is filed in the office of the county clerk within ten days of the execution of the agreement. This provision respecting ownership does not affect purchases in the ordinary course of business from a trader or sales of manufactured articles bearing the maker's name, with certain exceptions.

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 by being 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. (See also Judgments.)

Appeals. Appeals from all the Ontario courts are heard at Toronto by the Appellate Division of the Supreme Court of Ontario, whose decision is final unless the amount in dispute exceeds $2,000, or unless future rights, the title to real estate, or the validity of a patent are involved, in which cases a further appeal to the Supreme Court of Canada at Ottawa is allowed. It future rights are involved or if the amount in dispute exceeds $4,000, the appellant, instead of going to the Supreme Court of Canada, may, at his option, appeal to the Judicial Committee of His Majesty's Privy Council at London, Eng. The Privy Council will not hear appeals from the Supreme Court of Canada unless some constitutional question or some important principle is involved.

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. A Bankruptcy Act was passed in July, 1919 by the Dominion Parliament and came into force July 1, 1920. This Act has been extensively amended in each subsequent year.

Under this Act a creditor is entitled to present a Bankruptcy Petition against a debtor when the debt owing amounts to $500. A creditor's petition may, however, usually be withdrawn by him with the debtor's consent.

A debtor commits an act of Bankruptcy when he makes an assignment for the benefit of his creditors, fraudulent conveyance or preference, or absconds or allows an execution to remain **in the Sheriff's** hands unsatisfied for fourteen days after seizure, or if the execution is returned by the sheriff endorsed to the effect that he can find no goods whereon to seize. The Act contains a provision for the appointment of a trustee to dispose of the assets of the debtor.

The Act also contains a provision for discharge of the debtor effective no sooner than three months next after the date of his being adjudged bankrupt. In Ontario receiving orders and voluntary assignments against and by debtors supersede attachments, executions, judgments, except judgments for alimony duly registered in registry office against the lands of the defendant, and executions in the hands of the sheriff not completely executed by payment subject to the first execution creditor's lien for costs. Garnishee orders, receiving orders by way of equitable execution are also superseded by receiving orders and voluntary assignments. A preference made by a debtor which has the effect of defeating any creditor is presumed to be fraudulent and void if attacked within three months of the making of a receiving order or voluntary assignment. If attacked after three months, the intent to prefer must be proved. If proved, the transaction is set aside. (See wages.)

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 to his own use of any real or personal property, is deemed an absconding debtor, and his property may be seized and taken by a writ of attachment, for which a judge's order must be obtained upon affidavits setting forth the necessary facts.

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 Statutes of Canada (1923) 13–14 Geo. V, c. 32, and cited as the Bank Act. A Bank cnartered under tne Bank Act in addition to being a corporation with certain specified powers and subject to certain special restrictions, is authorized to "engage in and carry on such business as appertains to the business of banking." No Bank can issue a note for less than $5.00 nor for any sum which is not a multiple of $5.00. The payment of the notes is a first charge on a bank's assets. Notes of the bank are payable at par throughout the Dominion of Canada.

Banks are authorized to hold real estate, such as is required for their own use, but all other real estate howsoever acquired must be sold within seven years from the date of the acquisition thereof. This does not prevent banks from erecting office buildings upon their own land and renting the larger part of them to concerns who are not carrying on a banking business. They can not take a mortgage on real estate but may hold such as "additional" security only. Banks are also authorized to make advances in aid of building ships, to take security therefor, to lend money upon the security of standing timber and upon the security of natural products alive or dead stock of a wholesale dealer, and to take warehouse receipts as collateral security

Banks may also lend money to any wholesale manufacturer upon the security of goods manufactured by him or procured for such manufacture. Such security shall be duly registered in form prescribed by Section 88 of The Bank Act, and is not assignable by the bank to any third party. Banks are also authorized to lend money to farmers upon the security of their threshed grain upon the farm. They are obliged to make returns to the Finance Minister showing their assets and liabilities and giving the names of their shareholders in detail. Severe penalties are provided for the non-compliance of the various provisions of the Act. There is a double liability of shareholders. They are liable in the amount of their shares and notwithstanding that these shares are paid in full they are further liable in a sum equal to such amount to the bank's creditors. (See also Interest.)

Bills of Exchange and Promissory Notes. War stamp taxes on cheques are as follows: if the amount does not exceed $5.00, no tax; (a) does not exceed $50.00, two cents; (b) exceeds $50.00, but does not exceed $2 500.00, for every $50.00 or fraction thereof, two cents; (c) exceeds $2,500.00, one dollar. On every Promissory Note or Bill of Exchange On every Advance by way of Bank Overdraft. For every $50.00 or fraction thereof, two cents. If the Bill of Exchange

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

is payable at sight or on demand or on presentation or within three days after date or sight, such bill shall be deemed to be drawn for an amount not exceeding $2,500. 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 (1st Monday in September), King's Birthday (3d of June), 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, or if testator lived out of Ontario, in the city where the property devised is situate. 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.

Conditional Sales Agreements. (See Agreements, etc.)

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.)

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, and must be registered in order to be valid against subsequent purchasers for value or mortgagees. Common forms of deeds may be used, but the statute provides a short form, with covenants and bar of dower. All deeds must 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.) The short forms of deed and affidavit of execution are as follows:

This indenture, made in duplicate the ..... day of ..... in the year of our Lord one thousand nine hundred and .....
In pursuance of the short forms of Conveyances Act:
Between.....
Witnesseth that in consideration of the sum of..... dollars, of lawful money of Canada now paid by the said part..... of the..... Part to the said part ..... of the First Part (the receipt whereof is hereby by ..... acknowledged) .....he..... the said part ..... of the first part Do..... Grant unto the said part ..... of the ..... part in fee simple.....
All and Singular th.... certain parcel ..... or tract .....of land and premises situate, lying and being .....
To have and to hold unto the said part .....of the ..... Part..... heirs and assigns to and for .....their sole and only use forever Subject Nevertheless to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown.
The said part ..... of the First Part Covenant .....with the said part .....of the .....part THAT ..... he .....ha.... the right to convey the said lands to the said part .....of the ..... part notwithstanding any act of the said part .....of the First part .....
And that the said part .... of the .....Part shall have quiet possession of the said lands free from all incumbrances.
And the said part ..... of the First Part Covenant .... with the said part ....of the ..... Part that .... he .... will execute such further assurances of the said lands as may be requisite.
And the said part ..... of the First Part Covenant .... with the said part .... of the ..... Part that .... he.... ha.... done no act to incumber the said lands.
And the said part .... of the First Part Release ..... to the said part .... of the ..... part ALL ..... Claims upon the said lands. And the said party of the Third Part hereby bars her dower in the said lands.
In Witness Whereof the said parties hereto have hereunto set their hands and seals.
Signed, Sealed and Delivered in the Presence of

Dominion of Canada, Province of Ontario, To Wit,
I, ...,
of the.....of .....,
in the .....County of .....
.....make oath and say:

1. That I was personally present and did see the within Instrument and a Duplicate thereof duly signed, sealed and executed by .....the part .....thereto.
2. That the said Instrument and Duplicate were executed by the said part .....at the .....
3. That I know the said part.....
4. That I am a subscribing witness to the said Instrument and Duplicate.

Sworn before me at the ..... of ..... in the ..... of.....this..... day of .....in the year of our Lord 19-....

A Commissioner for taking Affidavits, etc.

An act known as The Land Transfer Tax Act came into force on the 1st of June 1921 imposing a tax of one-fifth of 1 per cent of the sale price payable on the registration of any deed. An affidavit must be attached to the deed showing the full and true amount of the moneys and the value of any property or security given as consideration.

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. When no issue, a widow is entitled to $1,000 part of the net value of her deceased husband's real and personal property. In respect to the residue, real estate descends like personality—one-half to the widow or widower and one-half to all the next of kin in equal degree, where there are no children. Where there are children, one-third to the widow and two-thirds to the children and the legal representatives of children who predecease the intestate. 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.)

Dower. When there is no issue of the marriage surviving the father, the widow is entitled, in case of intestacy, to $1,000 of her husband's estate and over that amount to her share in the residue. Under the Devolution of Estates Act, R. S. O. (1914) C. 119, a widow is always entitled to elect whether she will take her interest under this act or her dower (i. e., a life interest in one-third of her husband's real property—free from his debts, and in all cases she is allowed to take a sum in gross or distribute 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.

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 persons, 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 supreme courts within their respective jurisdiction. Writs against goods and lands are concurrent and run for three years, and can then be renewed. A land writ can only be issued where the judgment is $40 or upwards. Patent rights may now be sold under execution. Rights under trade marks are apparently not saleable 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 $100.00, and feed therefor for thirty days, tools and implements of, or chattels ordinarily used in, the debtor's occupation, to the value of $100; and of bees fifteen hives. Lands acquired under the Public Lands 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. (See Revised Statutes of Ontario [1914] C. 179.) (See Alien Enemies.)

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 Supreme 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 only to the extent of 70 per cent, and if it can be shown that the exemption is unreasonable, the percentage may be reduced or increased by a judge.

Holidays. In Ontario the legal holidays are Sunday, Christmas Day, New Years Day, Good Friday, Easter Monday, Victoria Day (24th May), Dominion Day (1st of July), Labor Day, King's Birthday (3d June), Thanksgiving Day, on the Monday during the week of the 11th of November. Where the time allowed for doing any act expires, unless otherwise provided, on a holiday, it may be done on the next day succeeding.

Husband and Wife. (See Married Women.)

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 (R. S. C. Chap. 122) limiting rate of interest to 12 per cent per annum on negotiable instruments 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

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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 and not made in Quebec, any defense may be set up which might have been made to the original judgment. (See Alien Enemies.)

Jurisdiction. (See Actions.)

Lands Titles System. Lands in Ontario may be under the Land Titles Act, R. S. O. (1914) C. 126, 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. No seal is necessary. Where papers are sent to the United States for execution, under this system, special directions will be required.

Limitations. All actions upon simple contracts, notes, bills, accounts, and all instruments not under seal and money demands, must be commenced and brought within six years from the time the cause of action arose or accrues, or from last payment thereon or written acknowledgment. Actions upon a bond or other specialty within twenty years. 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 or when the cause of action did not accrue before he left Ontario, 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. Actions on insurance policies must be brought within one year after the cause of action arose, and where the death of the insured is unknown the action must be brought within one year and six months after the death be known to the person entitled to the claim.

Married Women. A married woman can acquire, hold, and dispose of, by will or otherwise, any real or personal property, including any property acquired by her in any employment which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill, as her separate property, and as though she were a femme sole, without the intervention of any trustee. She may enter into any contract, and be sued, either in contract or tort, and be liable as if a femme sole, and her husband need not be joined as a party. All damages and costs recovered against her in an action shall be payable out of her separate estate, she cannot however be adjudged bankrupt unless she is a trader. 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 Supreme Court of Ontario. 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 must be registered in same registry office. After maturity the mortgagee is not entitled to charge the mortgagor any interest by way of bonus for the privilege of paying off the mortgage. The execution of a certificate is proved in the same manner as a deed or a mortgage. The usual remedies of a mortgage are sale or foreclosure and possession or action upon the covenant, which must be commenced within ten years after cause of action arose or from any acknowledgement.

At the 1921 session of the Ontario Legislature an Act was passed authorizing Cities with a population of 200,000 or over to pass a by-law levying a tax of one tenth of one per cent on the amount of all mortgages registered in the Registry Office. This is in addition to the usual fee for registration of $1.50.

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 registry office of the registry division in which they intend to carry on business. The declaration must set out the full names, occupations, and residence of the partners, the business they propose to carry on, and for how long their partnership has existed or is to exist, and that the persons named in the affidavit are the only members of the partnership. 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. In 1920 an Act was passed codifying the law relating to Partnership, which is contained in the Statutes of Ontario (1920) 10-11 Geo. V., Chapter 41

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.

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, death, place of abode, inventory, valuation, 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.

Proof of Claims. A solicitor should be furnished with full name and residence of plaintiff and defendant and with particulars of the claim if on an open account. If on a judgment an exemplification of the judgment under the seal of the court and hand of the chief judicial officer is required. Where the plaintiff is resident out of the province in action within the Jurisdiction of the Supreme Court of Ontario, security for costs may be ordered by the Court on the application of the defendant, in which case a bond in the sum of $400 must be given or $200 paid into court to abide the event of the suit. If an action is brought by a foreign plaintiff and the plaintiff could, if an appearance was entered, apply for summary judgment on the ground of no defence, he may on being required to give security, pay into court $50.00 and then make the application and if successful the plaintiff may sign judgment and issue execution. In action within the jurisdiction of the county court the security for costs is just one-half the amount required in Supreme Court actions. (See Aliens.)

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 he is not barred by statutes of limitation or by final order of foreclosure made by the court, or by sale made under powers contained in the mortgage.

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.

Succession Duty Act. The fees payable under the Succession Duty Act were very largely increased by an Act passed by the Ontario Legislature known as the Succession Duty Act. 1920.

No duty is payable on any estate the value of which does not exceed $5,000 and where the aggregate value of the property of the deceased exceeds $5,000 but is not in excess of $25,000 and passes to the grandfather, grandmother, father, mother, husband, wife, son, daughter, son-in-law or daughter-in-law of the deceased, no duty is payable.

Where the aggregate value exceeds $25,000 and does not exceed $50,000, 1 per cent; for larger amounts from 2½ per cent to 10 per cent.

Where the whole amount passes to one person and the aggregate value exceeds $10,000 but does not exceed $25,000 1 ½ per cent; for larger amounts from 2 per cent to 15 per cent.

Where the aggregate value of the property of the deceased exceeds $10,000 but does not exceed $25,000, or so much thereof as passes to lineal ancestor of the deceased except the grandfather, grandmother, father or mother, or 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 per cent; and for larger amounts from 7 per cent to 17 per cent.

Where the value of any dutiable property exceeds $10,000 and the amount passing to any one person last mentioned excepting grandfather, grandmother, father or mother, exceeds the amount next mentioned, a further duty shall be paid from 2 ½ per cent to 13 per cent.

Where the aggregate value exceeds $5,000 and does not exceed $10,000 and any part thereof passes to any person in any other degree of collateral consanguinity to the deceased than as above described or to any stranger in blood to the deceased save as above provided for the same is subject to a duty of 7½ per cent of the value and for larger amounts from 12½ per cent to 35 per cent.

The Succession Duty Office assumes to tax property of non-residents in the province at a rate fixed by the total value of the estate.

Suits. (See Actions, Affidavit, Appeal, 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 of purchase money paid by purchaser at tax sale with 10 per cent added.

Transfer of Shares. A tax of 3 cents must be paid by the transferor in money or stamps for every $100 or fraction thereof of the par value of the stock of a company upon every change of ownership by sale, transfer or assignment of shares or debenture stock made or carried into effect in Ontario.

Wages. Upon the making of a receiving order or voluntary assignment, a seizure under execution, or the administration of an estate, the wages of all persons in the employ of bankrupt or the assignor, execution debtor, or deceased are paid in priority to the claims of ordinary or general creditors to the extent of three months wages, and such persons rank as ordinary creditors for the remainder, if any, of their claims.

War Taxes. Owing to the exceptional conditions arising out of the late war various new taxes acts have been passed by the Dominion Government and as the scope of these acts come within the defined area of Dominion Legislature they are binding on individuals and corporations within the Province of Ontario.

The Business Profits War Tax Act is no longer in force, but there is a new Sales Tax of 5 per cent payable by the manufacturer, which came into effect July 19, 1924.

As regards tax on income there is exemption of the first $1,500 in the case of unmarried persons and widows or widowers without children, and exemption of $3,000.00 for married persons or persons supporting dependent parents, and an additional exemption of $500 for each child under 18. The normal tax is 2% on the first $2,000 of the taxable income and 1% for each additional $1,000 thereof up to $20,000. On incomes in excess of $20,000 the tax is 1% additional for each $5,000. As regards the tax on corporations and joint stock companies, the tax is 9% straight.

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, and in the presence of one another. 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 to a witness, or to the husband or wife of a witness, is invalid. A will to pass personal property need only be in conformity with the law of the country in which the testator had his domicile. To pass real estate, however, the will must be valid and effectual for such purpose according to the law of the country where the real estate is situated. 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.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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.)

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 the 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.)

Administration of Estate. There is one surrogate and probate court of 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. Claims should be proved against the estate within eight months after letters testamentary have been taken out, as after that time the executor, on being sued, may plead specially that he had no notice of the debt, and that he has applied the assets in his hands in payment of the debts proved against the estate and of which he had notice. If the personalty is insufficient to pay debts, executor or administrator may, by leave of the surrogate, sell the real estate. 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 or 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 ambassador ,envoy, minister, charge d'affairs, and secretary of embassy or legation exercising his functions in any foreign country, a British consul-general, consul, vice-consul, acting consul, pro-consul, and consular agent exercising his functions in any foreign place. The person before whom oath taken may certify to his own official character and qualification under his hand and official seal.

Aliens. Previous to confederation (A. D. 1783), aliens might hold real estate not exceeding 200 acres. Now, by Dominion statute, aliens may hold real and personal property of every description the same as natural-born British subjects, and succession may be traced through aliens; but an alien is not eligible for any public office. Aliens may be summoned to defend suits in this Province in certain cases. (See Courts.)

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 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. (See Interest, Corporations.)

Bills of Exchange and Promissory Notes. 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. If 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.

Brokers. Stock brokers are liable to pay an annual tax to the Provincial Treasurer and are also required (under penalty) to file with the Provincial Treasurer of the Province a copy of the charter and regulations (or proposed charter and regulations) of, and an affidavit or statutory declaration giving certain information, concerning every Company whose debentures, bonds, stocks or shares are about to be sold or purchased or offered for sale or purchase by such stock holder.

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 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. 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.

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.

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. Certain taxes are imposed upon foreign insurance and other companies transacting business within the Province.

The Statute further provided that such Company should transmit to the Provincial Secretary in the month of January in each year a statement showing all changes in the Directors, officers and agents of the Company, that have taken place during the preceding year.

It has recently been decided by the Supreme Court of this Province that the statute of April 24, 1913 governing corporations was passed to protect the Public in dealing with such Companies, and that such Companies were prohibited from doing business in this Province until the statement required by the Act had been filed. Consequently any business transacted by such Company without having filed the required statement was illegal and no action could be brought in respect to it. The statute referred to was repealed on the 24th April, 1915, by the Companies Tax Act but the repealing statute preserves the penalties incurred by such Companies during the time they were in default and the business carried on in the Province in the two years or more which the statute was in force by such companies as failed to comply with the requirements of the Act would thus appear to be invalid.

By the Companies Tax Act passed on the 24th April, 1915, certain taxes are imposed upon companies doing business in the Province. By this statute every Company liable to pay taxes is required, before carrying on business in the Province, to file with the Provincial Treasurer:

(1) A true copy of the charter and regulations of the company verified in manner satisfactory to the Provincial Treasurer and showing that the company by its charter has authority to carry on the business being carried on or about to be carried on in the Province, and if any instrument included in the aforesaid is not written in the English language, a notarially certified translation thereof; and shall also at the same time, and on the first day of April in each year thereafter, without any notice or demand therefor file with the Provincial Treasurer:

(2) An affidavit or statutory declaration that the company is still in existence and legally authorized to transact business under its charter, and containing information showing:—(a) The corporate name of the company; (b) How and under what special or general Act the company was incorporated; (c) Notice of the place where the head office without the Province is situate; (d) Notice of the city, town and county in this Province where the head office of the company in this Province is situate or proposed to be situate; (e) The amount of the authorized capital stock of the company; (f) The number of shares into which it is divided; (g) The names, addresses and occupations of each of the directors and officers of the company, and of the agent or person in charge of the company's business in this Province; (h) The time of the existence of the company if incorporated for a limited period; (i) In the case of a limited company, that the company is limited; (j) The amount of stock subscribed or issued and the amount paid up thereon; (k) In the case of an insurance company a copy of the last balance sheet and auditor's report thereon.

This last mentioned statute declares that non-compliance with its provisions as to filing such affidavit, declaration or document subjects the Company to liability for payment of a fine but does not prohibit the Company from carrying on business.

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 twelve 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.)

Digitized for FRASER
http://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

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 acknowledgment 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 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.

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.

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 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.)

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.

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 transactions 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, ratable and without prejudice.

Interest. Parties may contract to pay interest at any rate agree 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.

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 or 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.

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.

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.

Stock-brokers. (See brokers.)

Taxes. The real and personal property of a deceased person if exceeding $3,000, are subject to a succession duty varying from 1 1-2 per cent to 7 1-2 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 Banks.)

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

Revised by BELLEAU, BAILLARGEON and BELLEAU,
Barristers, 132 St. Peter St., Quebec, Quebec.

Acknowledgments. The proof of instruments is made by affidavits of witnesses to execution. (See Affidavits.)

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. If the husband fails to authorize his wife for any reason, the court may upon petition supply the authorization in his stead. A minor is always represented by his tutor (guardian) except when he brings suit for the recovery of his wages, a person interdicted for insanity, prodigality or drunkenness by his Curator. 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). Non-resident plaintiffs may be required to give security for costs ranging from $15 to $400, and to file a power of attorney authorizing the solicitors to institute the action. 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. 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. Any service upon the heirs of a person deceased within the previous six months may be made upon them collectively, without mentioning their names or residences, at the former domicile of the deceased.

Affidavits. Within the province must be taken before a judge or officer of the court, or a mayor, or a Secretary Treasurer of a Municipality, or a commissioner of the superior court for the province or a notary public. In Great Britain and Ireland, before the mayor, a Quebec commissioner, a commissioner appointed by the lord chancellor to receive affidavits in England, or a notary public. In British possessions, before the mayor, a Quebec commissioner or a judge of a superior court. In a foreign country before the mayor or chief magistrate of any city, borough, or town under the common seal, or a British consul or consular agent, or a Quebec commissioner, or a Notary Public under his hand and official seal. 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 declaration before any such functionary have the same force and effect in any but judicial proceedings.

Aliens have a right to acquire and transmit property (except shares in British ships) 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 cannot, however, hold any public office nor exercise the franchise. They may be naturalized after residence in Canada during the year immediately preceding the demand and a previous residence, in Canada or any other British country, of four years during the last eight years preceding the demand. (Naturalization Act of 1914.) (See Actions, Corporations.)

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Arrest. Arrest for debt does not exist in this province. But vide Capias and Attachment.

Assignment and Insolvency. An insolvent trader cannot give one or more creditors a preference over his other creditors.

Any insolvent debtor whose liabilities are over $500 can make a voluntary assignment of his property for the benefit of his creditors in the hands of the Official Receiver of his locality. There are special dispositions for wage earners or persons engaged solely in farming or the tillage of the soil.

The debtor must accompany his assignment with a sworn statement of his assets and liabilities. After accepting the assignment and filing it at the office of the Court the Official Receiver appoints a Provisional Guardian to take charge of the debtor's property until appointment of the trustee. He must give a fidelity bond. As soon as possible after the assignment the Official Receiver calls a meeting of the creditors at which a trustee (generally a professional liquidator) and inspectors (not more than five) are elected to carry out the winding up of the estate. The trustee must give a bond. As soon as possible after the assignment creditors must file a sworn statement of their claim with the trustee. A secured creditor can realize his security or file a claim for the balance, or he can abandon his security to the trustee and file his whole claim, or he may value his security and file his claim for the balance. If the security is valued the trustee can buy it in at the creditor's valuation. The trustee realizes the assets of the estate. Real estate, however, must be sold after permission of the Court and of the inspectors has been obtained and with all the formalities required for a sheriff's sale. Briefly, mortgage creditors must be notified, the sale must be advertised, the sale should be by public auction. Such a sale discharges mortgages on the real estate. However with the consent of the mortgagees and permission of the Court and inspectors the trustee can make a private sale subject to the mortgages. The trustee must pay a first dividend within six months after the assignment and a final dividend as soon as possible. Costs and fees of the Guardian and of the Trustee, costs of the first seizing creditor, rent, wages, workmen's compensation, taxes of all kinds, unpaid vendor's privilege (by present jurisprudence of the Quebec Courts) are privileged claims. Ordinary creditors share rateably. An insolvent debtor may be discharged by order of the Bankruptcy Court after notice to the creditors and upon certain conditions the principal of which are that the estate has paid $0.50 in the dollar, that the insolvency has not been caused by the debtor's fault, that he has kept proper books, that he has loyally helped the liquidation and that he is guilty of no fraud or concealment. The fee of the trustee is 5 per cent of the realized assets or any other amount voted by the creditors' meeting. After the winding up the estate the trustee must report to the Court and obtain his discharge. After assigning a debtor can at a duly convened meeting of his creditors make a composition with his creditors or obtain from them an extension of time, and when such a proposal has been approved by the creditors representing the majority in number and three quarters of the proved debts and by the Bankruptcy Court, the arrangement is binding on all creditors. The Bankruptcy Act contains extensive provisions for the interrogation of the debtor and for the annulment of any fraudulent or preferential transactions and for the recovery of concealed assets.

Any insolvent trader who has discontinued his payments generally, who makes a fraudulent transfer, who absconds, who allows his property to be seized, who secretes his property, etc., can be forced to assign upon a Petition of one or more of his creditors, whose claims total over $500, to the Bankruptcy Court of the debtor's locality. If the petition is granted the property of the debtor devolves to the Official Receiver and the Court appoints a guardian. It can also appoint an interim sequestrator pending adjudication on the petition. At the first meeting the creditors appoint a trustee and inspectors and the liquidation is carried out as in the case of a voluntary assignment.

A Receiving Order or a voluntary Assignment suspends all suits against the Debtor, excepting the action of a secured creditor for the realization of his security. (The Canada Bankruptcy Act of 1920 and amentments). A petition in bankruptcy cannot be made against a farmer or wage earner.

Attachment and Capias. A person may, even before judgment, upon affidavit, attach the property of his debtor, whether in the hands of such debtor himself, or of third parties, or arrest his person, on the ground of secretion of property, absconding with intent to defraud, and in the case of insolvency, of his refusing to assign. A capias for the arrest of a debtor cannot be issued for a sum less than $50, but his property may be attached before judgment 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 or Ontario. A previous order from a judge is required if the capias is demanded for unliquidated damages. Women, priests or ministers, and septuagenarians are not liable to be capiased, except after judgment in specified cases.

Banks. Banks are created by act of parliament of Canada and governed by federal law only. The minimum capital is $500,000, and that amount must be subscribed and $250,000 paid in to minister of finance before it can obtain a certificate to do business. The latter amount is returned less $5,000 retained to secure the note issue. Majority of directors must be British subjects. Shareholders are liable to creditors for an amount equal to the sum unpaid on their shares plus a further sum equal to the par value of their shares. Dividends are payable quarterly or half yearly. No dividend shall exceed 8 per cent until bank has a reserve fund equal to 30 per cent of paid up capital. Notes issued are in sum of $5.00 or in multiple of $5.00, and total issue shall never exceed amount of unimpaired paid up capital. Notes of $1.00, $2.00 and $5.00 are issued by the government. Banks are not allowed to recover more than 7 per cent for interest or discount.

Banks cannot lend money on real estate mortgages, but they can take mortgages as additional security for previous advances made in the ordinary course of business. Banks can advance money for the construction of ships and can take on ships, during and after construction, securities by way of mortgage, bottomry and respondentia agreements. Banks may make loans to trustees under the Bankruptcy Act. Banks can make advances on the collateral security of warehouse receipts and bills of lading. Banks can make loans to purchasers, shippers and wholesalers of farm, forest, mines, sea, lakes and rivers produce, on the security of such produces, to purchasers, shippers or wholesalers of live or dead stock or their produces, on the security of such stock and produces; to farmers on the security of their threshed grain; to wholesale manufacturers on the security of their raw materials and of their unfinished and finished products. The Banks' lien on property pledged as security for loans is prior to that of the unpaid vendor and they have right to sell property pledged in default of repayment of the loans.

They pay an interest of three per cent on deposits. The Banks Act is revised by the Parliament of Canada every ten years. The Act actually in force is the one of 1923.

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

Chattel Mortgages do not exist in Quebec. Movable property not susceptible of hypothecation. Lien contracts, however, are recognized by the Courts. (See Deeds and Mortgages, and Liens and Privileges.)

Corporations are created by act of the parliament of Canada or of the legislature of Quebec, by special charter, or under the companies' acts of Canada, or of the province of Quebec. Shareholders, except in case of banks, are only liable to the amount of their subscribed shares, and when these shares are paid in full, they are discharged from further liability, but directors are liable for wages of employes within certain limitations; they are also liable if they declare and pay a dividend when the company is insolvent, or which renders the company insolvent or inpairs its capital. Provision has been made for the winding up of joint stock companies under the winding act. (R. S. Canada 1906, Ch. 144.) However since the adoption of the Federal Bankruptcy Act liquidations of joint stock, companies is carried out under the provisions of that Act. Aliens can hold stock and are eligible for directors in any joint stock company. Foreign commercial corporations may transact business, sue, and be sued here. 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, except Federal corporations, are required to obtain a license before carrying on business in the province and for such license a fee is payable based on the capital. They can hold real estate to the same extent that domestic corporations can and must be registered in the same manner as partnerships (see that word) under penalty. There is a provincial tax of one-tenth of one per cent up to $1,000,000 and of $50 for each additional $100,000 on the paid up capital of joint stock companies; also a tax of $30 for each place of business of joint stock companies in Quebec and Montreal and of $20 for each place of business elsewhere in the province; also a stamp tax of 2 cents per each $100 par value on stock transfers. Foreign companies not otherwise taxed must pay to the Provincial Government a tax of one half of one per cent of their gross revenue for each calendar year. All joint stock companies must make annual reports to the Secretary of the Province.

Courts. The District, Magistrate's Court has original jurisdiction where the amount demanded is less than $100; the Superior Court where it is $100 or upward. Generally an appeal can be taken to the Court of King's Bench in cases over $200. An appeal can also be had from the Court of King's Bench to the Supreme Court of Canada in all cases over $2,000, and to His Majesty's Privy Council, in England, in all cases, over $12,000, and in cases for smaller amounts to both courts, if questions of titles to land or if future rights are involved, or if a fee due to His Majesty is claimed by the action.

Deeds or Conveyances. There is no special form required in the drafting of deeds or conveyances except in regard to real estate; no seal is necessary. If the parties can sign their names no witnesses to the signatures are necessary. The general rule can be laid down that deeds affecting chattels or movables when executed outside of the Province should be executed in the form required by the law where they are so executed. In relation to the conveyance of real estate ceded by the French Crown prior to 1763, the deeds must be executed before a Notary Public of the Province of Quebec, who keeps the original and delivers copies which are accepted as proof of the contents thereof and signatures to the original deed, without any extrinsic proof. Deeds affecting real estate ceded by the English Crown since 1763 may be executed within or without the Province in the presence of two subscribed witnesses, one of whom must make an affidavit as to the execution of the deed, which affidavit must be attached according to rules herein laid down. (See Affidavit, Mortgages and Registrations.)

Divorce. (See Husband and Wife.)

Dower. Legal dower which results from marriage when no contract to the contrary, consists of the usufruct or life interest 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 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 for dower, being exigible on separation of property. Conventional dower exists on movable or immovable property when provided for by the marriage contract. It should be registered; in the case of legal dower registration of the marriage certificate, with description of the immovable subject to it, should be made. In the case of conventional dower, registration of the contract of marriage is also required. Unregistered dower rights do not affect third parties.

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 an attachment before judgment. Except for taxes, executions cannot issue against immovables unless the judgment is for a sum amounting to or exceeding $40, without costs.

Exemptions from Seizure. The debtor may withdraw from the seizure made of his movable property in execution of a judgment, certain articles of furniture, which consist generally speaking in the furniture and cooking utensils absolutely necessary for housekeeping (the enumeration is contained in Article 598 of the Quebec Code of Civil Procedure). 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 are made so by law in Article 599 C. P.

Generally speaking salaries and wages are exempt from seizure for (a) four-fifths when they do not exceed $3.00 per day; (b) three-fourths between $3.00 and $6.00 per day; (c) two-thirds, when they do exceed $6.00 per day.

Husband and Wife. Parties may before marrying remove themselves from the effect of the general laws of the province governing their property, as regards rights created by marriage, by entering into a marriage contract, which must be made in notarial form and is irrevocable. In this contract they may bind themselves by all kinds of agreements not contrary to public order or good morals. They cannot in any way after marriage, depart from the contract, even to confer benefits on each other, except that 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 unless both husband and wife join in an assignment. If no marriage contract was entered into, the law of the matrimonial domicile governs. The matrimonial domicile is the domicile of the husband at the time of marriage, but if at the time of the marriage the husband's intention was to settle in this country and make his domicile here, and he does so, the law of this province would govern. When there is no antenuptial contract of marriage, there exists, 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 cannot become a public trader without the authorization of her husband. With this authorization she 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, cannot bind herself either with or for her husband, otherwise than as being common as to property. 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. Divorce is only granted by special act of parliament of Canada. There are no Divorce Courts nor laws in the Province of Quebec. Every married person carrying on business must register the particulars of the financial relations between him and his wife, and whether they are common or separated as to property.

Interest. The legal rate of interest is 5 per cent per annum but 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 upon rate, 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, cannot receive more than 6 per cent on unpaid stock calls. Banks are not subject to any penalties for usury, but cannot recover more than 7 per cent.

Judgments are valid for thirty years. In regard to moveables, executions thereon may issue in eight or fifteen days and sale effected

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

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, even in case of subsequent winding up of debtor's estate under Canada Bankruptcy Act (latest jurisprudence of Quebec Courts.). It takes about a week to obtain judgment in either the Superior or District Magistrate's Court if the action be not contested.

Legislature (meeting of). According to Section 86 of the British North America Act, 1867, there shall be a session of the Quebec Legislature once at least in every year, so that twelve months shall not intervene between the last sitting of the legislature in the province in one session and its first sitting in the next session. No special date for the regular meeting of the Legislature is fixed by law; it usually sits in the beginning of each year.

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 conditions; that the sale is not made on credit, that the thing sold is still intact and in the same condition, that it has not passed into the hands of a third party who has paid the price, that the revendication be exercised within eight days of the delivery, or thirty days in case of insolvency. He has also the right to demand the dissolution of the sale, for 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, and before delivery. 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 has become insolvent. A promise of sale, accompanied by actual delivery, is equivalent to a sale. The right of stoppage in transit may be exercised when the goods are in possession of third parties as agents for their delivery. Wage earners, suppliers of materials, builders and architects may obtain liens on real estate under the Statutes of Quebec School and Municipal taxes and also assessments for building or repairing churches, parsonages and churchyards are secured by a privilege on real estate without registration.

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. School and municipal taxes are prescribed by three years. Claims of workmen under the Compensation Act are prescribed by one year. Prescriptions may be renounced or interrupted.

Married Women. (See Husband and Wife.)

Mortgages and Registration. The common law mortgage does not exist but has its equivalent in the "hypothec" which constitutes a charge or lien on immovables giving to the creditor the right to bring the property to judicial sale and to be paid by preference on the proceeds. The deed creating the hypothec must be passed before a notary public of this province and must be registered in the proper Registry Office. 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. Hypothecs can only be granted on real estate; they can not be given on movables or chattels except as provided in special statutes respecting shipping, banking and debentures issued by corporations under trust deeds duly registered. Effects may, however, be pledged by being placed in the hands of a creditor to secure his debt, the lien created by the pledge exists only so long as the thing remains in the hands of the creditor, or of a third party agreed upon by the creditor and debtor. Judgments give liens only on the real property against which they are registered.

Notes, Cheques, and Bills of Exchange. Bills of exchange and promissory notes must be made payable in money, and must be unconditional and absolute. They are transferable by indorsement and delivery, or, when payable to bearer, by delivery only. 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 liable. 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 bill of exchange may be fixed by the acceptor in his acceptance. Three days of grace are allowed on all bills and notes except those 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.

Partnerships must be registered, as also must all persons carrying on business alone, under a name different from their own, in the office of the registrar and the prothonotary in each district where they carry on business. Joint stock companies must be registered in the same manner. Persons doing business under name of another, the word "registered" must be added. The laws applicable to commercial partnerships are derived from the French and English commercial laws. Partnership property must go to payment of firm debts in preference to debts of a partner, and in case such property be found insufficient for the purpose, the private property of the partners or of any one of them is also to be applied to the payment of the debts of the partnership; but only after the payment out of it of the separate creditors of such partners or partner respectively. Partnerships may be limited or general. If limited, the following declaration must be registered: 1. The name or firm of the partnership. 2. The general nature of the business. 3. The names and residences respectively of all the general and special partners. 4. The matrimonial status of the partners. 5. The amount of capital contributed by each. 6. 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 debts, but the special partners are only liable to the extent of the amount they contributed. If above statement not registered all partners are jointly and severally liable. In general partnerships all partners are jointly and severally liable.

Successions. The surviving consort inherits one-third and the remaining two-thirds goes to the children or their descendants without distinction of sex and whether issue of the same or different marriages. If there be no surviving consort, then the children or other descendants, inherit the whole estate, to the exclusion of all other relatives. If the deceased die leaving no issue, but leaving a consort and a father or mother, and collateral relations up to nephews or nieces, the surviving consort takes one-third, the father and mother one-third and the collateral relations, the other third. If the deceased leaves no issue, but leaves a consort and a father or mother or both, but leaves no collateral relations up to nephews or nieces, the surviving consort takes one-half and the other half devolves to the father or mother or both. If the deceased die leaving no issue, nor a mother or father, but leaves a consort and collateral relations, the consort takes one-half and the collateral relations the other half. If a person dying without a consort or children surviving, leaving his father or mother and also brothers or sisters, or nephews and nieces, in the first degree, the succession is divided into halves, one-half to the father or mother who share it equally and the other half to the brothers and sisters, nephews and nieces. The surviving consort succeeds to the whole estate when the deceased leaves no issue and has no father or mother living, and is without collateral relations up to nephews and nieces in the first degree, inclusively. In all other cases ascendants inherit to the exclusion of collateral relations who must be within the twelfth degree to inherit in any case. When the deceased leaves no consort capable of inheriting, nor relations within the heritable degrees, the succession falls to the crown. These different persons represent the deceased, and claims against this estate should accordingly be made against them.

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, wholly written, dated and signed by the testator; these wills require no witnesses, and a will so made in a foreign country disposing of property in the Province of Quebec would be valid in the latter, provided the testator has his domicile in the Province, or that the law of the country where the will is made recognizes this form of will. 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 movable 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 seizing may be extended by the terms of the will to immovables and beyond the year and the day allowed by law. Wills executed in a foreign country are void in the province of Quebec, unless executed according to the laws of Quebec, or according to the forms required by the laws of the country where they are made.

SYNOPSIS OF

THE LAWS OF SASKATCHEWAN

RELATING TO

BANKING AND COMMERCIAL USAGES

Compiled by Cross, Jonah, Hugg & Forbes, of the Saskatchewan Bar, Regina, Saskatchewan. (See card in Attorneys' List.)

Note. The laws existing in the Northwest Territories prior to the formation of the two Provinces (Saskatchewan and Alberta) are still in force with alterations made by the Provincial Statutes.—Editor.

(Revised to November 1, 1925.)

Generally all laws and all orders and regulations made thereunder, so far as they are not inconsistent with anything contained in The Saskatchewan Act, or as to which this Act contains no provision intended as a substitute, therefor and all courts of civil and criminal jurisdiction, and all commissions, powers, authorities and functions, and all officers and functionaries, judicial, administrative and ministerial, existing immediately before the coming into force of said Act in the territory thereby established as the Province of Saskatchewan, shall continue in the said Province as if said Act and the Alberta Act had not been passed: subject, nevertheless, except with respect to such as are enacted by or existing under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the said Province, according to the authority of the Parliament or of the said Legislature. 4–5 Ed. VII. c. 42, s. 16 (part), the Saskatchewan Act.

Assignments. The only assignments for the general benefit of creditors now valid are those made under the provisions of the Bankruptcy Act 9-10 George V. ch. 36 which came into force on the 1st July 1920. Assignments so made are known as "authorized assignments" and are governed by the provisions of the Bankruptcy Act and the rules thereunder.

Any insolvent debtor whose liabilities to creditors exceed $500.00 may before the making of a receiving order against him make an assignment of all his property to the Official Receiver. A trustee is subsequently appointed by the creditors. An authorized assignment vests the whole of the debtor's property (other than that part thereof which is exempt from seizure under the laws of the Province wherein the debtor resides (vide Exemptions, infra) in the trustee. The general provisions of the Bankruptcy Act relating to the administration of the debtor's estate, the proof of claims, preferential claims and distribution of estates apply equally to an authorized assignment as to a bankruptcy. Notice of the assignment must be published in the Canada Gazette and in a local newspaper and at the same time a notice of the first meeting of creditors must also be published not less than six days prior to the meeting. The execution of an authorized assignment is an Act of Bankruptcy and may be the foundation of a petition for a receiving order.

An assignment having been made continues until the assignor applies to the Bankruptcy court for a discharge. This he may do at any time after the execution but it cannot become effective sooner than three months after the making of the assignment; and the court may refuse, grant or suspend the operation of an order of discharge in its discretion, but in certain cases cannot grant a discharge.

The penal provisions of the Bankruptcy Act apply to an assignor as well as to a bankrupt. (See also "Book Debts" and "Bulk Sales.")

Attachment of Debts. The plaintiff in any action for a debt or liquidated demand, and any person who has obtained a judgment or order for the recovery or payment of money may issue a garnishee summons, which is issued upon the plaintiff or judgment creditor, his solicitor, or agent filing with the clerk an affidavit showing the nature and amount of the claim against the defendent or the amount remaining due and unsatisfied under judgment, and swearing positively to the indebtedness and stating to the best of the deponent's information and belief the proposed garnishee (naming him) is indebted to such defendant or judgment debtor. Service of such garnishee summons shall bind any debt due or accruing due, from the garnishee to the defendant or judgment debtor. No debt due or accruing to a mechanic, workman, laborer, servant or employee for or in respect of his wages or salary, shall be liable to seizure or attachment, unless

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

the same exceeds $75 in the case of a married person or of a person with certain dependents and $40 in the case of other persons, and then only to the extent of the excess. Provided that where the debt due or accruing due is wages or salary for a period of less than one month, the part thereof exempt from attachment shall be that sum which bears the same proportion to the amount of the exemption as the period for which the wages or salary is due, or accruing due, bears to one month of four weeks. This exemption does not apply to debts for board and lodging. If the garnishee disputes his liability he shall enter a statement to that effect with the clerk; otherwise twenty days after service judgment may be signed against him.

Bankruptcy. The Dominion Bankruptcy Act which came into force on July 1st, 1920, applies to all the Provinces in the Dominion and the statement of its provisions set out elsewhere in this volume is equally correct for the Province of Saskatchewan.

Bills of Sale and Chattel Mortgages. Bills of Sale and Chattel Mortgages not accompanied by an immediate delivery and an actual change of possession of the things sold or mortgaged, must be registered within 30 days from execution, with an affidavit of execution and an affidavit of bona fides, which varies according to the circumstances of the case. They take effect from the date of registration only. In case they are not registered as provided for, or in case the consideration for which they are made is not truly expressed, they are null and void as against creditors, and subsequent purchasers, and mortgages in good faith for valuable consideration. No mortgage, bill of sale, lien, charge, incumbrance, conveyance, transfer or assignment intended to operate or have effect as a security in so far as it assumes to bind or affect any growing crop, or crop to be grown, shall be valid, unless the same be as security for the purchase price of seed grain. There are special provisions relating to seed grain mortgages. Chattel mortgages may be given on growing crops to extent of $250.00 in the aggregate on the crops of a quarter section or $350.00 in the aggregate upon crops of a half section or any greater quantity of land as security for purchase price of meat, groceries, flour, clothing, or binder twine. Such mortgages do not derogate from priority of seed grain mortgages, thresher's liens or landlord's liens. Certain special provisions must be complied with in taking these mortgages. Mortgages filed cease to be valid as against creditors, etc., after two years, unless renewed. Further renewals after first renewal must be yearly. Renewal is made by statement in form prescribed, which shows interest of mortgagee, assignee, etc., full statement of amount due, all payments on account, with affidavit of truth of the statement. In case of removal from one district to another three weeks are allowed to file copy of mortgage in office for district to which goods are removed. Notice of intention to remove must be given to the mortgagee twenty days prior to removal. Any person failing to give such notice is liable to a penalty not exceeding $100.00

In the event of the permanent removal into the province of goods and chattels subject to a mortgage or bill of sale made without the Province, from a place where such goods and chattels were when such chattel mortgage or bill of sale was given, a copy of such chattel mortgage or bill of sale, and of the affidavits and documents and instruments relating thereto verified as compared copies, must be filed with the Registration Clerk of the district to which such goods and chattels are removed within three weeks of such removal.

No chattels covered by any chattel mortgage may be seized or sold except by the Sheriff of the Judicial District within which such chattels, are situated or some other persons duly authorized by him for the purpose.

Bills of sale and chattel mortgages given by railway companies, covering cars, equipment, rolling stock, etc.. are not required to be filed with the Registration Clerk, but the same or sworn copies thereof may be filed with the Registrar of Joint Stock Companies within the prescribed time for filing chattel mortgages, and from the date of such filing shall have priority without renewal, affidavit of execution or of bona fides. (Vide Exemptions.)

Book Debts Accounts or Debts to be Incurred. Assignments of these by retail trader or merchant must be executed, attested and registered as chattel mortgages.

Bulk Sales. Whenever a sale of stock in bulk, i. e., out of the usual course of vendor's trade or business or of the entire stock in trade or of an interest in the vendor's business or trade, the purchaser must demand and receive from the vendor a verified statement showing the names, addresses, and claims of all creditors. Before paying to the vendor any part of the purchase money or giving any notes or security therefor, one of the following provisions must be complied with (1) the vendor must deliver to the purchaser a written waiver of the Act from creditors representing not less than 60 per cent in number and amount of claims as shown by said statement or (2) the purchaser must pay the whole purchase price and deliver all notes and securities for same to a trust company authorized to carry on business in Saskatchewan for distribution among creditors as shown by said statement. If provisions of the Act not complied with, sale is fraudulent and void against creditors unless all creditors paid in full. Any action to set aside any sale in bulk for failure to comply with the act must be commenced within sixty days from date of sale or date when attacking creditors first had notice thereof.

Decedent's Estate. An officer known as the Official Administrator is appointed for each Judicial District, or such part thereof as may be desirable, who may administer the estate if no application be made for probate or administration within one month after decease of any person. He also may take possession of any neglected property of deceased. The executor, administrator or official administrator, advertises for creditors and in the advertisement sets a time within, which all claims must be filed with him. All claims must be verified by statutory declaration also state securities held and value thereof. Distribution is made after time named in the advertisement. Claimants not filing within time limited do not share in the distribution, but may follow property into hands of person receiving same. Administrators and official administrator must pass accounts before the judge within two years after grant of letters.

Devolution of Estates. Both real and personal property descend and are distributed in the same manner. The property of any man dying intestate leaving a widow but no issue shall belong to such widow absolutely, provided that prior to his death she has not left him and lived in adultery after leaving him.

If he dies leaving a widow and one child each takes one-half.

If he dies intestate leaving widow and children, the widow takes one-third and children take remainder in equal shares. If he dies intestate leaving no issue or widow his estate goes to his father and mother equally or to the survivor and if both predecease then to his brothers and sisters and their descendants. In the distribution of both real and personal property of any woman dying intestate, illegitimate children shall have the same rights as if legitimate. In the event of an illigitimate child dying intestate and without issue, mother takes both real and personal property.

If a married woman die intestate same rules apply as, of husband dying intestate.

If under will widow takes less than if deceased had died intestate leaving children, she may apply to court of King's Bench for relief. Application must be made within six months or if husband has died since January 1, 1917, application may be made later with leave of a judge.

Dower. No Transfer, Agreement for Sale, lease or other instrument intended to transfer or convey any interest in a homestead (i. e., the home) shall be effectual for such purposes and no Mortgage or encumbrance intended to charge any homestead with the payment of a sum of money shall be valid unless the same is signed by the owner and his wife if he has a wife. The wife must appear before one of several officers named in the Act separate and apart from her husband and have the instrument explained before signature by her and such official must give a certificate in the form prescribed by the Act. Knowledge on the part of a transferee, mortgagee, encumbrancee, or lessee that the land described in such instrument is the homestead and that the party executing the instrument has a wife who is not a party thereto, is fraud and in an action by the wife such instrument or any Certificate of Title issued thereon to any person affected by such fraud may be set aside and cancelled. On the death of the owner of a homestead no instrument signed by the personal representative shall be effectual to pass any estate or interest in the same or render it liable for the payment of any sum of money unless the same is executed by the wife as aforesaid so long as the homestead is exempt from seizure under execution. (Vide Exemptions as to circumstances in which homestead is exempt from seizure after death of owner.)

Examination of Judgment Debtor. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it can obtain an ex parte order for the examination of the debtor, or in the case of a corporation, of any officer thereof, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what means of satisfying the judgment or order. The examination is for the purpose of discovery only, and no order is to be made on the evidence given. It may be used on any subsequent proceedings between the same parties, or between the execution creditor, and any transferee of the property and effects of the execution debtor, or in any proceeding to obtain payment directly or indirectly, whether by attachment of debts, equitable execution or otherwise.

Execution. May issue immediately after judgment. An Execution expires in six years unless renewed. Execution may be stayed on special grounds on motion to a judge, who may impose terms as to security, etc.

Exemptions. The following real and personal property of an execution debtor and his family are free from seizure by virtue of all writs of execution:

1. The necessary and ordinary clothing of himself and his family.
2. Furniture, household furnishings, dairy utensils, to the extent of five hundred dollars.
3. The necessary food for the family of the execution debtor during six months, which may include grain, flour, vegetables and meat, either prepared for use or on foot.
4. Four oxen, horses or mules, or any four of them, six cows, six sheep, four pigs, and fifty domestic fowls, besides the animals the execution debtor 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 four animals, one wagon or two carts, one mower or cradle and scythe, one breaking plough, one cross plough, one set of harrows, one horse rake, one sewing machine, one reaper or binder, one set of sleighs, and one seed drill.
6. The books of a professional man.
7. The tools and necessary implements to the extent of $200 used by the execution debtor in the practice of his trade or profession.
8. Seed grain sufficient to seed all his land under cultivation not exceeding 160 acres, at the rate of two bushels per acre, defendant to have choice of seed, and fourteen bushels of potatoes for planting.
9. The homestead, provided that the same be not more than 160 acres; in case it be more the surplus may be sold subject to any lien or incumbrance thereon. The execution forms a lien or charge on the homestead, but sale cannot be enforced under the execution.
10. The house and buildings occupied by the execution debtor, and also the lot or lots on which the same are situate according to the registered plan of the same to the extent of three thousand dollars.

Any person who has executed a chattel mortgage on any of the chattels mentioned in paragraphs 4 or 5 shall in case of a seizure under such mortgage have the right to claim as exempt from such seizure and from sale any such chattels covered by said mortgage which cannot be so seized or sold without depriving the mortgagor of the number or part of the number of the kind of such chattels as he might hold free from seizure by execution. A person cannot contract not to take the benefit of this provision.

The debtor is entitled to choice from the greater quantity of the same kind of articles. None of the above articles except food, clothing and bedding, when their price forms the subject matter of the judgment upon which the execution is issued, are exempt from seizure. No exemptions in case of execution issued upon a judgment or order for the payment of alimony, nor when debtor has absconded or is about to abscond from Saskatchewan leaving no wife or family. In case of death of the execution debtor, the exemptions may be claimed, if the property is in the use and enjoyment of the widow and children, or widow, or children, of the deceased, and is necessary for their maintenance and support.

Fraudulent Conveyances. A judge may order the examination of an execution debtor and any transferee of any of his property before an examiner. The creditor can then proceed by a summons in chambers and use the examinations as evidence to set aside the conveyance as fraudulent. The Banrkuptcy Act also provides for the setting aside conveyances as fraudulent under certain circumstances especially when they have been executed less than three months prior to the presentation of a bankruptcy petition or if the conveyance has the effect of giving any creditor a preference over other creditors. Fraudulent preferences and transfers may also be set aside by action in the ordinary way.

Insurance. Every person of the full age of 21 years has an unlimited insurable interest in his own life and may effect insurance of his person for the whole or any part of his life for the benefit of himself, his estate or any other person. If premiums paid on such insurance are paid with intent to defraud creditors, they may receive out of insurance money an amount not exceeding the premiums so paid and interest thereon.

Insurance may be effected by a parent upon the life of his child under 21 years of age provided the child is at least one year of age at the time the insurance is effected. If the child dies under the age of 10 years the total amount of all insurance moneys payable on the death is limited by a scale set forth in the Act.

A person not of the full age of 21 years but of the age of 15 years or upwards may effect insurance on his own life for his own benefit, for the benefit of a preferred beneficiary, or of a father, brother or sister.

Preferred beneficiaries constitute a class and include the husband, wife, children, grandchildren and mother of the assured.

The assured may designate the beneficiary by the contract of insurance or by an instrument in writing attached to or endorsed on it or by an instrument in writing including a will otherwise in any way identifying the contract and may in the same way from time to time appoint or apportion the insurance money or alter or revoke the benefits or add or substitute any beneficiary or divert the insurance money wholly or in part to himself or his estate but not so as to alter or divert the benefit of any person who is a beneficiary for value nor so as to alter or divert the benefit of a person who is of the class of preferred beneficiaries to a person not of that class or to the assured or his estate.

If one of several beneficiaries dies in the life time of the assured and no apportionment or other disposition is subsequently made, the insurance shall be for the benefit of the surviving beneficiaries in equal portions if more than one. If all beneficiaries so die and no other disposition is made, the insurance forms part of the assured's estate.

Where it is stated in the contract or declaration that the money is for the benefit of the wife, or wife and children, or children, the words "wife" and "children" refer to all those of the class living at maturity of the contract and also children living at maturity of the contract of any child of the assured who predeceased him and the last mentioned children take the share their parent would have taken if alive. If a contract of insurance is declared to be for the benefit of a wife only designated by name, it shall be deemed to be for the benefit of

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

the wife living at the maturity of the contract and all children of the assured living at such time as if the contract had been declared to be for the benefit of wife and children generally.

Where one or more designated preferred beneficiaries dies in the lifetime of the assured whether an apportionment has been made or not, the assured may provide that the share or shares of the person so dying shall be for the benefit of the assured or his estate or any other person. In the absence of such declaration the share of any person so dying shall be for the benefit in equal shares of the survivors of such designated preferred beneficiaries except where the person dying is a child of assured leaving children, in which case such children take share their parent would have been entitled to.

Interest. The legal rate is 5 per cent, but any rate may be agreed upon.

Justices of the Peace. These officials have jurisdiction through the Province. They have a limited civil jurisdiction in matters between masters and servants, and in regard to trespass of animals and stray animals and in recovery of debts not exceeding $100.

Judgments. Where the claim is for a debt or liquidated demand, and no appearance is entered within the time limited, which varies, plaintiff can enter final judgment for claim and costs. Appearance may be struck out on a four-day summons if defendant has no defence on the merits. No judgment can be obtained except by issuing writ and giving defendant opportunity to defend; but in territories where executions are in the Sheriff's hands a more summary procedure is provided for a creditor upon notice to the debtor getting a certificate from the clerk of court entitling him to participate in moneys realized by the Sheriff.

Liens. Where goods over the value of $15 are sold upon condition that the right of property or possession shall not pass until the payment of the purchase price, a copy of the agreement of sale with affidavit of bona fides must be filed in the registration district within which the purchaser resides, within thirty days, or the seller cannot set up his right against subsequent purchasers, mortgagees or creditors. There must be a sufficient description of the goods sold so that they may be readily and easily known and distinguished. In case the vendor repossesses the goods he must retain the same for twenty days before selling, during which time the purchaser may redeem, and he must also give purchaser notice of the sale eight days before it takes place.

Manufactured goods, having at the time of delivery thereof, to the buyer or bailee the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device, are not within the provisions of the Act if such manufacturer or vendor (being the seller or bailor of such goods or chattels) keep an office in the Province where inquiry may be had and information procured concerning such sale or bailment, and if such manufacturer or vendor, or the agent thereof gives such information within five days of request therefor made in person or by registered letter.

Goods comprised in a lien note or conditional sale may not be removed into another registration district unless notice of intention to remove is given to vendor not less than twenty days before removal. Any person violating this provision is liable to a penalty not exceeding $100. (See also Mechanics' Liens.)

Foreign Judgments. Provision is made for enforcing in this Province a judgment recovered in another Province or Territory in Canada provided such Province or Territory similarly enforces Saskatchewan judgments. The only Province with which such reciprocal arrangement has been concluded is Alberta. Apart from this provision the common law applies. See Brenner vs Cameron 150 O. W. R. 331 and Rutledge vs United States Savings & Loan Company 37 S. C. R. (1906), 546.

Limitations of Actions. All actions for the recovery of merchants' accounts, bills, notes. and all actions of debt grounded upon any lending or other contract without specialty shall be commenced within six years after the cause of such action arose.

The provisions of The Real Property Limitation Act, 1874, being chapter 54 of the Statutes of the Imperial Parliament, passed in the 37th and 38th years of Her Majesty's reign, are declared to be in force, and to have been in force since the passing thereof.

Judgments outlaw in twelve years, and contract under seal in twenty years.

Married Women. They have all the rights and are subject to all liabilities of a femme sole, and may in all respects deal with land as though unmarried.

Mechanics' Liens. The Mechanics' Lien Act gives a contractor, mechanic, labourer and material man a lien for work done or material furnished upon the interest of the owner in the erection, building, land, etc.

A labourer cannot sign away his right to a lien.

The lien created by the Act has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders, recovered, issued or made after such lien arises and over all conveyances or mortgages registered after registration of such lien.

The owner of the building, etc., upon which the work is being done must retain 20 per cent of the cost for thirty days after completion thereof.

Every mechanic or labourer whose lien is for wages shall to the extent of thirty days' wages have priority over all other liens.

A claim for lien may be filed in the Land Titles Office of the Land Registration District, in which the land is situated.

(a) By a contractor or sub-contractor during the performance of the contract or within thirty days after completion.

(b) For services during the performance of the services or within thirty days after completion.

(c) For wages during the performance of the work or within thirty days after last day's work.

(d) For materials at any time before or during the furnishing or within thirty days after the furnishing of the last material.

Failure to file a lien within the times above mentioned or to commence an action within such times to enforce such lien defeats such lien as against intervening parties becoming entitled to a lien or charge upon the land whose claim in respect of said land is registered prior to the registration of such lien and as against an owner in respect of payments made in good faith to a contractor after the expiration of said period of thirty days and before any claim of lien is filed or notice thereof given to an owner.

Once a lien is filed it remains in force until withdrawn or otherwise removed by proceedings under the Act.

The taking of security or recovery of a personal judgment does not merge the lien.

Proceedings to enforce a lien are taken in the District Court.

Real Estate. The Torrens System has been in force in the Territories since the 1st January, 1887, and is continued in force in the Province. A certificate of title is issued to the owner, which is binding upon all persons including the Crown, declaring that the owner is entitled to the estate mentioned in the certificate in the lands therein described subject to the liens, encumbrances and interests mentioned in the certificate. The certificate is conclusive evidence. Whenever any dealing takes place in regard to the land the certificate must be produced, and a memorial of the dealing endorsed upon the certificate. No instrument is of any effect until registered, and cannot be registered without the production of the certificate. Persons entitled under unregistered instruments, or to equitable estates, etc., can protect their interests by caveat.

The whole matter is set out in "The Land Titles Act." Ch. 67 Revised Statutes of Saskatchewan, 1920 and amendments.

Wills. Every person may dispose of by will all real and personal property including future and contingent estates to which he is entitled either at law or in equity at the time of his death. No will made by any person under the age of 21 years is valid. No will excepting wills of soldiers on active service and mariners at sea is valid unless it is in writing, and signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, who shall attest and shall subscribe the will in the presence of each other and of the testator, but no form of attestation is necessary.

Devise (other than a charge for the payment of a debt) to a witness, or the husband or the wife of a witness, is void, but the witness may prove the execution of the will. No will, codicil, or any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil executed as above described, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required to be executed, or by the burning, tearing, or otherwise destroying the same, by the testator, or by some person in his presence and by his direction with the intention of revoking the same.

SYNOPSIS OF

THE LAWS OF CUBA

RELATING TO

BANKING AND COMMERCIAL USAGES

Revised by Messrs. Arellano & Recio, Attorneys & Notaries Public, General Riva 16, Havana Cuba, Dec., 1926.
(See Card in Attorneys' List.)

Actions. All actions in Cuban law may be generally grouped as follows:

1. Verbal action, brought in the municipal courts, and comprising all suits that amount involved in which does not exceed $500.

2. Actions of lesser quantity including those the amount involved in which is greater than $500 and does not exceed $1,500.

3. Actions of greater quantity, in which the amount involved exceeds $1,500 of the value of which can be determined only by suit. These actions of greater quantity also include all questions as to political or honorary rights, personal exemptions and privileges, filiation, paternity, interdiction as well as those concerning the civil status and condition of persons.

4. Executory action, so called because the suit begins, by the execution or attachment of the property of the defendant debtor.

Besides this general classification there are special actions for divorce, judgments by arbitrators or amicable compounders, intestate or testamentary proceedings, insolvency, suspension of payments, bankruptcy, provisional seizures and security of property in litigation, compulsory process in civil litigation and commercial affairs, foreclosure proceedings, interventions, protection in the possession, ejectment, provisional maintenance, redemptions, summary proceedings relating to property, and the voluntary jurisdiction which includes all proceedings in which the intervention of the judge is necessary, without there being actual litigation, or in which no question is raised, between known and determined parties: but the procedure in these actions in addition of their special rules is governed almost entirely by the rules of the four general divisions.

Affidavits. Affidavits as commonly used in the United States, are unknown in Cuba. They cannot be used in any court proceeding. All sworn statements of fact must be made before a competent court and not before notaries public.

Aliens. Aliens resident in Cuba and doing business there enjoy the same civil rights as natives.

The law of civil procedure provides for a foreigner's bond, but this may be demanded only when the native defendant proves that in the country of domicile of foreign plaintiff such a bond, to secure costs, is required of Cubans. No bonds are required from American citizens to join as relators in criminal proceedings. Others must give it.

Arrest. There is no imprisonment for debt, either on actions of contract or tort, except in cases of bankruptcy and insolvency in which indications of fraud may have been shown. Courts are authorized, however, in all actions in which parties litigant have proceeded with recognized temerity either as parties plaintiff or defendant, to order the arrest on failure to pay costs caused by such temerity.

Attachments. Attachments are before or at the time of filing actions, as distinguished from attachments in execution proceedings after judgment.

1. Preventive attachments: These are attachments which may be granted before filing suit under the following conditions: (a) that with the petition there be presented a document from which the existence of the debt is apparent; (b) that the debtor, against whom it is requested is either: First, an unnaturalized foreigner. Second, if a native or a naturalized foreigner that he have no known domicile or any real property, or an agricultural, industrial or mercantile establishment, in the place where sued; or third, that even having said qualifications has disappeared from his domicile or establishment, leaving no person in charge of the same, and if a person has been left, in charge that such person should not know of his whereabouts, or secretes himself, or that there is a reasonable motive, to believe that he will conceal or impair his property to the prejudice of his creditors. (c) if the document presented be executive. (See Section 2). (d) if the document presented is not executive, the attachment will be granted at the risk of the creditor. (e) at the request of a merchant, when the action is brought, against one who is or has been a merchant or manufacturer, and the debt proceeds from mercantile transactions, and the sum sued for consists in a certain amount of money in cash.

A bond for an amount not exceeding the sum sued for and one-third more must be given in all these attachments except under condition. (c) Suit must be filed within twenty days (or ten days if requested by defendant), after the attachment or the same will ipso facto vacate, and the plaintiff will be condemned to pay the costs and to indemnify the damages and prejudices caused thereby.

Captains or consignees of vessels are also entitled to an attachment on their cargoes to secure payment of the freight. All cargo is subject to the lien of the vessel during a period of twenty days after discharge, for payment of freight.

2. Attachments at the time of filing action: These attachments may be issued only upon presentation of a document with executive action, to wit: (a) A public deed duly executed before a competent notary public. (b) Any private document, the signature of which has been acknowledged under oath before a competent judge. (c) Confession of debt before a competent judge. (d) Bills of exchange properly accepted and protested, provided that the acceptor does not deny the authenticity of the acceptance at the time of protest for non-payment. (e) Any negotiable instruments payable to bearer or to a determined person, lawfully issued representing matured obligations, or their matured coupons. (f) Original mercantile contracts executed before a public agent or broker, signed by the contracting parties and the agent or broker, provided that the same are found to be identical with the records of such public agent or broker and has been legally executed.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

The attachments will endure until judgment, unless debtor gives bond to release the same.

Attachments in execution proceedings: After obtaining a judgment if the debtor fails to pay the sum sued for, the creditor may attach a sufficient amount of the debtor's property and may sell such property at public auction to satisfy his claim.

Property exempt from attachments. The following properties cannot be attached: Railways open to the public service, as well as their stations, depots, shops, lands, structures and buildings necessary for their use, nor car locomotives, rails, and other effects belonging to the rolling stock used in the operation of the line. 2. The bed of the debtor, his wife and children, the wearing apparel of the same, and the tools used in the trade or occupation. 3. Salaries of public employees, pensions paid by the State, the province or the municipality.

Otherwise, attachments may be levied on salaries not exceeding $1,000 for the one-fourth part of same, one-third on salaries not exceeding $2,250 and one-half on salaries over $2,250.

No other property is exempt.

Chattel Mortgages. Chattel mortgages are not known in Cuban law and foreigners doing business in Cuba would do well to make note of this fact, but a mortgage or lien on chattels may be constituted by pledge. (See Pledge.)

Claims Against Estates of Deceased Persons. There is no fixed period within which claims against the estate of deceased persons must be presented provided such claims have not prescribed. If such claims are not presented during the period of administration of an estate they will still hold good against the heir unless such heir shall have accepted the inheritance under the benefit of inventory, in which case he cannot be held to pay debts which exceed the value of the property inherited by him; if the heir accepts the inheritance, without the benefit of inventory he is liable both with the property inherited and all of his own property for all of the debts of the estate.

The debts of the deceased not specially secured by mortgage pledge, or otherwise, must be paid by the executor, administrator, or the heirs in the following order. (1) Debts preferred in favor of the province or municipality. (2) Judicial expenses. (3) Funeral expenses of the debtor and those of his wife or of such of his children as are dependent upon him if these last have no property of their own. (4) The expenses of last illness of said persons caused in the year prior to the death of the debtor. (5) Wages and salaries of clerks and domestic servants during the year prior to his death. (6) Advances made to the debtor or to those of his family dependent upon him either in food or clothing and within the same period. (7) Claims admitted by notarial instruments or approved by the judgment of competent court. All other claims against the estate shall be paid only after the foregoing have been satisfied.

Corporations. The corporations may be constituted by two or more persons by a public document executed before a notary public. This document must comprise the following requirements: Names, surnames and address of the incorporators, name of the company, which must be suitable to the class of business to be transacted and can not be identical of any pre-existing corporation; the names of the persons who are to direct the affairs of the corporation and the manner of filling vacancies; capital stock with a statement of the value given to the property brought in to the company apart from cash or on what basis the valuation is to be made; the number of shares into which the capital stock is divided and represented; the term or terms within which the part of the capital not paid in at the time of the incorporation is to be contributed or otherwise stating the person or persons authorized to determine the time and manner to collect the unpaid capital; term for which the company is organized, objects of the company, time and manner of calling and holding regular and special stockholders' meetings; the submission to the vote of the majority of stockholders' meeting duly called and held in such matters properly brought before the meeting; the number of persons or shares that must be present or represented to adopt binding resolutions.

Besides these provisions, the articles of incorporation which are in fact, the by-laws of the company, may contain such other stipulations as the organizers may introduce. Stockholders are liable only for the value of stock paid for or subscribed by them.

These articles of incorporation, once executed before the notary public as well as any subsequent amendments thereof are recorded in the mercantile registry and also with the department of agriculture, commerce and labor. There is no fee for incorporation, but there is a treasury tax equal to one-fourth of one per cent (¼%) on the value of all stock actually issued and paid for without reference to the authorized capital stock.

Corporations organized to operate railroads are subject to special railroad law in military order 34 of 1902.

There is no state charter nor any public functionary who may pass on the form of the articles of incorporation. Inspection is exercised by the government over corporations through the Bureau of Commerce of the Department of Agriculture, Commerce and Labor.

Corporations pay a tax to the municipality. Corporations pay also an annual tax on the net profits of business at the rate of eight per cent or six per cent according to the class of business transacted. Banks pay six per cent. All business pay the state one and a half per cent tax on gross sales. There are also some taxes created by the new law of public works, consisting on one-fourth of one per cent of the money drawn from the republic of Cuba, and upon all kinds of goods and merchandise exported, this latter will be reimbursed to the exporter if the price of the exportation is paid within ninety days and returned to Cuba.

Two per cent on the rent of real estates and mortgages, and ten cents per gallon of gasoline sold in the republic.

There is no provision for resident or native directors hence all of the directors of the company may be foreigners if desired.

The rights and privileges of stockholders are determined by the provisions and by-laws of the company.

A corporation is required to keep a minute-book, journal, ledger, and book of inventories and balances, and a book in which shall be copied letters and telegrams, all of which books must be stamped before being opened by the municipal court.

There is no penalty attached to it except that the books not kept in conformity with the laws may not be used as evidence in the courts in favor of the company, and that if the company is declared in bankruptcy the directors will be imprisoned unless sufficient bond is furnished.

Foreign corporations having a branch office in Cuba are required by law to record in the mercantile register a copy of their charter, amended charter, if such there be and by-laws together with a certificate issued by a Cuban consul that the corporation has been organized and authorized in accordance with the law of its domicile. There is no tax attached to this other than a nominal fee for the mercantile register. Once recorded, they are on an equal plane with native corporations. Foreign corporations are also obliged to maintain a resident manager or officer for taxation purposes.

There are special provisions requiring bonds from foreign insurance companies doing business in the republic.

All stock companies doing business in Cuba, whether native or foreign must record in the mercantile register power of attorney granted to the manager of the company, showing specifically the powers granted.

Stock possessed by foreigners in native stock companies is not subject to reprisal in case of war.

Deeds. All documents in Cuba are either public or private.

Public documents or deeds are those authorized by a notary or competent public official, with the solemnities required by law.

They are divided as follows

1. Public documents executed before a notary public.
2. Certificates issued by agents of the stock exchange and commercial brokers with reference to the records in their care.
3. Documents issued by public officials with reference to matters under their supervision.
4. Minute books, by-laws, regulations, property statistics and other documents found in the existing public records.
5. Ordinances, by-laws and regulations of companies, corporation or associations, providing they have been approved by public authority.
6. Birth, death and marriage certificates issued by the persons in charge of the civil registries.
7. Writs of execution and all kinds of judicial proceedings.

Documents executed in foreign countries have the same value and force as those executed in Cuba, provided they comply with the following requirements (a) That the subject matter of the contract be licit and permitted by Cuban law. (b) That the contracting parties are qualified and have the legal capacity required by the laws of their own country. (c) That the forms and solemnities required by the laws of their own country have been complied with. (d) That the document shall have been legalized by a Cuban diplomatic or consular agent in the country where executed.

Acknowledgment of deeds is unknown in Cuba. Deeds are executed before a notary public and not merely acknowledged. The entire document is prepared by the notary public in long hand and the original remains for thirty years in his records and is then filed in the general records of the state. Deeds may be executed only before notaries public and in accordance with the notarial law; deeds so executed are binding evidence of their contents and may not be questioned by the signing parties.

All transfers of real property or contracts affecting real property or real rights, all powers of attorney, articles of incorporation, and all documents of whatever nature which must be recorded as a notice to third persons must be executed by and before a notary public.

Depositions. Depositions are used in Cuban practice only in the case of witnesses resident without the jurisdiction of the court.

They are taken by "exhortos" or judicial commissions which are called letters rogatory when addressed to foreign countries, and may be issued only to judges of regular courts. Cuban law has no provision for commissioners to take depositions

The interrogatories and cross-interrogatories of the exhorto are contained in the exhorto and arranged previously by consent of the parties

In no action may an exhorto or commission issue without written interrogatories.

Oral examination does not exist in Cuba in civil matters.

Descent and Distribution. All property real and personal not devised descends as follows

1. To decedent's lineal descendants without distinction of sex or age, and whether children by first or subsequent marriages. If lineal descendants are all of equal degree or consanguinity, they inherit equally; if unequal degree they receive the portions which their parents, if living would have received
2. In default of the lineal descendants property goes to parents in equal portions, and in default of parents to grandparents, if there be but one parent he inherits the entire estate.
3. In default of both descendants and ascendants the estate descends to natural children who have been legally recognized.
4. In default of all of the foregoing the estate passes to collaterals in the following order (1) If the decease leaves full brothers and sisters, these inherit in equal parts. (b) If there are brothers or sisters and nephews or nieces, children of full brothers, such nephews and nieces take the shares which their parents if living would have received. (c) Half brothers receive one-half of the share of full brothers. (d) In default of brothers or sisters and nephews or nieces, the entire estate passes to the surviving spouse. (e) If there is no surviving spouse, the entire estate goes to the other collateral relatives, which shall not extend beyond the sixth degree of relationship in the collateral line. (f) If there be none of the foregoing persons all property reverts to the state.

There is no distinction in the laws of descent between personal and real property

Notwithstanding the above provisions, the surviving spouse has the following rights in the property

If there be but one son, or issue of one son, the surviving spouse shall have the usufruct of one-third of the property during lifetime.

If there be more than one son, the surviving spouse shall have the usufruct during lifetime of a share of the property equal to that acquired by each one of the children.

If there be no descendants, but only ascendants, the surviving spouse shall have also the right to one-third of the property in usufruct.

If there be neither descendants or ascendants, the spouse shall acquire the usufruct of one-half of the estate.

Divorce and Separation. Divorce with dissolution of the marriage bond, can be decreed on the following grounds. (1) Adultery. (2) Any act of the husband which tends to prostitute his wife or of any or both spouses to corrupt or prostitute the children and the co-participation in their corruption or prostitution. (3) Assault and battery. (4) Reiterated use of slander. (5) Conviction of any of the spouses either as principal or as accomplice to any crime carrying with it imprisonment for over six years in the penitentiary. (6) The commission of any serious offence on the part of either of the spouses against the other or against the children, after the sentence have been confirmed. (7) Habitual drunkenness. (8) Inveterate gambling. (9) Abandonment voluntary and uninterrupted of the home for over two years. (10) Voluntary and repeated failure of husband to support the home. (11) Absence of either of the parties for two years after judicial declaration of such an absence. (12) Contraction of sexual disease outside of matrimony. (13) Mutual consent.

Divorce by mutual consent has a special proceeding and must elapse one year and one-half before final decision.

Separation and divorce carries with it the liquidation and division of the communal property and the separate administration by each spouse of his or her own property.

After divorce has been granted parties may re-marry after one year's time from date of decree.

The spouse who has been declared guilty under second of the causes of divorce, and he who has been twice found guilty in divorce actions cannot re-marry.

Separation: Separation "A mensa et thoro" may be applied for by the innocent party only on the following grounds: (1) Adultery of the wife in all cases, and that of the husband when it produces a public scandal or the humiliation of the wife. (2) Assault and battery, or slander. (3) Violence used towards the wife by the husband to force her to change her religion. (4) Attempt of the husband to prostitute his wife. (5) Attempt of either spouse to prostitute the children and the participation of taking advantage of their prostitution or corruption. (6) A sentence of life imprisonment for either spouse.

Dower. Dower or curtesy as an estate in property during coverture does not exist.

The only rights of the surviving spouse are those mentioned under Descent and Distribution.

Evidence. The different classes of evidence which may be used are as follows

1. Public documents which are those executed before a notary or competent public officer, with the formalities prescribed by law. Such documents as to date and transaction covered by them may not be disputed and are regarded as absolute evidence. They may not be attached or impugned by the party executing them as to statements made by him in said documents.
2. All private documents, which include letters, correspondence, books, photographs, telegrams, and all documents not executed before a notary public or otner competent public functionary. These documents are valueless as evidence until their authorship is proven. If the signature of a private document be denied by the signer, it must be proven by experts, unless the court personally examines same and satisfies itself as to the authenticitv of the signature.

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis

3. Confession or a deposition of the party litigant. This confession or deposition, although given technically under oath, does not bind the deponent to tell the truth, as there is no penalty attached to false swearing by an interested party. The examination of such litigant is conducted by means of an interrogatory or list of questions prepared prior to the examination and filed with the court, generally in a sealed envelope. The oath may be either decisive or indecisive. In the former case all statements made by the litigant in answer to interrogatories propounded by his adversary are binding on the said adversary, in the latter case such adversary may accept such statements as are beneficial to him and reject those prejudicial.

4. Personal examination by the court. This mode of proof is resorted to as a general rule only in those cases which treat of lands, titles or objects, the conditions of which do not change and which it will not be possible to produce in court.

5. Expert testimony. This class of evidence is mainly relied on to prove signatures, handwriting and values, expert evidence may be given only by persons holding degrees from the university of Havana or the provincial institutes, qualifying the holder as an expert, such experts are usually appointed by mutual consent, one being named by each party, and the third by the court in case of dissension. Their testimony is not binding on the court, which may accept the same at its own discretion.

6. Witnesses. No party litigant may be examined in his own behalf nor may his parents, children or relatives by marriage within the second degree testify for him.

The testimony of the following persons, while permitted will not be taken into consideration by the court unless substantiated by other evidence (a) Relatives of the party litigant presenting them within the fourth degree either of blood or affinity. (b) Partners, employees, or servants of the litigant presenting them as witnesses. (c) Persons having a direct or indirect interest in the suit or in another similar suit. (d) Persons who may have been convicted of perjury. (e) Intimate friends or known enemies of either of the litigants.

The evidence of witnesses is taken by means of writing interrogatories prepared and filed in the court at the time the evidence is proposed. The opposing litigant may file cross-interrogatories based on the interrogatories, at any time after the latter have been presented and prior to the examination of the witness

There is no oral examination of witness.

These interrogatories are propounded to the witnesses by the court and his replies reduced to writing as a general rule, testimony of witnesses unsupported by documentary evidence is not considered sufficient by the courts to substantiate a claim.

Executors and Administrators. Executors named under the will, if competent to act under the law, may perform all the duties of their office without the intervention of any court. They take possession of the property on the death of the deceased without any formality of letters testamentary. All persons capable of contracting may be executors, excepting married women, who may act only with the consent of their husbands, and minors who in no case may act.

Executors have all of the powers conferred upon them by the testator, provided same are not contrary to law. If the testator has not specified the powers of the executors, they shall have the following powers (a) To pay the funeral expenses of the defunct according to the dispositions of the will and should there be no such dispositions according to custom. (b) To pay all legacies which consist of cash with the consent and acquiescence of the heir. (c) To see that the testamentary dispositions are carried out, and, if necessary, to appeal to the courts to sustain such provisions to the will. (d) To take such precautions as may be necessary to preserve and care for the property, and to do this with the intervention of the heirs, if there should not be enough money in the estate to pay the funeral expenses and legacies, and the heirs should not furnish sufficient money the executors shall appeal to the court for permission to sell personal property, and if such should not be sufficient real property. All of this should be effected with the acquiescence of the heirs. If any minors absent persons, corporations or public institutions are interested in the will all sales of the property shall be made by public auctions and with the authorization of the court.

If no term be fixed for the executor he shall complete his work within the term of one year from the time of taking charge of the estate or from the conclusion of all litigation concerning the validity of or nullity of the will or any of the dispositions. The executor must render an exact account to the heirs of his operations and if no heirs have been appointed he shall render an account to the court of the disposition made by him of the property. In case of resignation or incapacity of the executor named in the will or if such executor named should refuse to accept the position the heirs snall see that the provisions of the will are carried out.

If no executor be named in the will the heirs therein named may with or without the intervention of the court take charge of the property and act as administrators thereof; and comply with the testamentary provisions; however testamentary proceedings may be instituted by any of the heirs or legatees named in the will, the surviving spouse, or any creditor, provided he shall present some written document in proof of his claim, and such heirs or legatees may not request testamentary proceedings when the testator has prohibited it expressly in the will nor may creditors whose claims are secured either by property or by bond given by the heirs institute such proceedings. In case of testamentary proceedings all of the property of the testator is brought into court, all of the parties interested in the estate are judicially summoned, and the court appoints an administrator. The inventory of the property and the distribution of same under the provisions of the will as well as the payment of all debts are effected by authority of the court and account is rendered to the court by the administrator.

In case of intestacy, and at the request of ascendants, descendants, surviving spouse, collaterals, or creditors, of the deceased the court takes temporary charge of the estate appointing immediately an executor-dative whose duties are to take charge of the funeral and interment of the defunct, take possession of all his books, papers and correspondence and make an inventory of all the property, which property is placed in the charge of an administrator who shall give such bond as may be satisfactory to the court.

The surviving spouse, if such there be, is entitled to the appointment of administrator of the property, and if there be none the court will appoint an administrator generally from among those proposed by the relatives or creditors.

The administrator having been appointed and the primary steps taken to secure the property left by decedent, the declaration of heirs at the request of interested parties is made by the court, and the declaration of heirship having been approved, the administrator ordered by the court to render an account to them and to turn over to such heirs all of the property, books and accounts of the estate the intervention of the court ceasing at this time. The court may continue to intervene in the matter at the request of any of the heirs of the surviving spouse, or when any of the heirs are minors or at the request of creditors.

The administrator as such represents the estate in all matters judicial and extra judicial but must have the authorization of the court in order to dispose of any of the property of the estate, and such property, if of a value of more than one thousand dollars, may be sold only by public auction unless all of the heirs and creditors interested consent to a private sale. The administrator renders his account to the court at such periods as the court previously fixes upon.

Both executors and administrators are allowed a compensation proportionate with the value of the property administered and the income upon the same.

The powers of the executor and administrator extend not only to property within the jurisdiction of the court, but to all the property real and personal of the deceased whether located in Cuba or in foreign countries. The executor and administrator may delegate their powers in persons residing in foreign countries, or persons interested in the estate may request the appointment of a special foreign administration to take charge of the property situated in foreign countries.

Insolvency, Bankruptcy and Suspension of Payments. The Cuban law distinguishes between the insolvency and bankruptcy, providing a special procedure for insolvents not merchants and another for insolvent merchants, the latter being known as bankruptcy.

A decree of insolvency may be requested either by the debtor or by creditors, who must show that at least two unsatisfied executions are pending against the debtor. The declaration of insolvency by the court ipso facto renders the debtor incompetent to administer his property or to hold any public office, and such incompetency continues until the conclusion of the proceedings. If he be found guilty of fraudulent insolvency he is subject to the criminal law. During the proceedings his property is administered by receivers appointed by the creditors. These receivers take entire charge of the assets and liabilities of the debtor under the supervision of the court, allowing claims in the order of precedence fixed by law. They also issue a verdict qualifying the insolvency as accidental, culpable or fraudulent, which verdict once approved by the court becomes final.

A declaration of bankruptcy (referring to merchants only) may be requested either by the debtor or by creditors, such declaration or decree has the following effects (a) The arrest and imprisonment of the bankrupt, unless he furnish bond fixed by the court. (b) Judicial seizure of the property of the bankrupt, his books, papers and documents. (c) The appointing of a temporary receiver who is placed in charge of the property seized by the court and remains in charge until permanent receivers are appointed. (d) Publication of the bankruptcy in the "Official Gazette" and local papers. (e) Retention of the correspondence of the bankrupt.

Bankruptcy is divided into three classes 1. Fortuitous, or that brought about by a succession of events foreign to the will of the debtor. 2. Culpable bankruptcy, or that brought about through gross negligence, yet without apparent fraud. 3. Fraudulent bankruptcy. However qualified, the bankrupt loses by the declaration of bankruptcy his civil and political rights until they may be restored to him by a decree of the court. Fraudulent bankruptcy, as well as fraudulent insolvency, is punished severely by the Penal Code.

The decree declaring bankruptcy ipso facto matures all outstanding obligations of the debtor. All acts of ownership exercised by the debtor which in any way tend to dispose of or affect his property, committed subsequent to the date when the court decides him to have failed are null and void.

The following contracts made within thirty days preceding the date of bankruptcy may be annulled (a) Transfer of real property made without sufficient consideration. (b) Dowries given to his daughters in consideration of their marriages. (c) Transfer of real property in payment of debts not yet due at the time of the decree of bankruptcy. (d) Mortgages given either for money loaned or for merchandise delivered, the delivery of which was not made in fact at the time of the execution and in the presence of the notary and witnesses subscribing the deed of mortgage. (e) Donations inter vivos made subsequent to the last balance drawn prior to the bankruptcy, provided such balance show the liability to be greater than the assets.

Creditors may also demand and obtain the annulment of all transfers of real property made in the month preceding the declaration of bankruptcy, of dowries given to daughters of the bankrupt from property belonging to the bankrupt and his wife, or any other transfer of the property of the couple without a sufficient consideration.

Suspension of payments. A merchant or corporation who possessing sufficient property to cover all his debts, foresees the impossibility of meeting them when they respectively fall due, may suspend payments, which shall be declared by the judge of first instance of his domicile in view of his declaration.

With the petition must be filed the balance of the assets and liabilities and the proposal of the extension requested from the creditors, which cannot exceed three years.

Interest. There is no usury statute nor any limit to the rate of interest which may be charged legally. In civil contracts if no rate of interest is mentioned none can be collected, except from the date of filing suit until that of collection. The legal rate is six per cent at present.

In mercantile obligations, failure to pay at maturity makes the debtor liable for interest from the date of maturity of the obligation at the rate of either that mentioned in the contract or, no interest being fixed, the legal interest of six per cent. If no date is fixed for the fulfilment of a contract interest begins to run unless specified in the contract from date of protest or filing of suit.

Licenses. Practically every profession, industry or trade must pay an annual license tax to the municipality and to the province for the privilege of doing business. These taxes are fixed in the case of the principal trades and professions by the central government, while those of minor importance are regulated by the municipalities themselves. Some of the annual taxes for the City of Havana, are as follows Bankers $1,250; importers and exporters, wholesale, $1,250; coal dealers, $1,250, shipyards, $1,500; consignees of vessels, $375; insurance agents, $250; money changers, $187.50; brokers, $125; tobacco manufacturers, $625; forwarding agents, $37.50, etc., foreign commercial travelers pay no licenses.

Liens. Liens, as understood in English common law, do not exist in Cuba, except with reference to vessels. There is no lien of mechanics laborers or builders, although these persons have a preferential right against the owner of the property for such amount as he may be owing the contractor; but should the owner of the property dispose of the same before satisfying obligations due these persons and before they have obtained attachment of the property there exists only a personal liability and creditors may not follow the property.
(See Attachments.)

Limitations of Actions. Bills of exchange, drafts and promissory notes, outlaw at three years from date of maturity, real actions on personal property, at six years, real action on real property at thirty years, real actions on mortgages, at twenty years, all personal actions which have no fixed term, at fifteen years.

The following actions outlaw in five years

(a) For the payment of income for support.

(b) For the payment of rents, whether derived from rural or from town property.

(c) That of any other payments which should have been made annually or in shorter periods.

The following outlaw in three years

(a) For the payment of judges, lawyers, registrars, notaries public, experts, agents and clerks for their charges and fees and the expenses and disbursements incurred by them in the discharge of their duties or offices in the matters to which the obligations refer.

(b) For payments to apothecaries for medicines which they have supplied; to professors and teachers for their salaries and stipends for the instruction they have given, or for the exercise of their profession, art or trade.

(c) For the payment of mechanics, servants and laborers, the amounts due for their services, and for the supplies or disbursements they may have incurred with regard to the same.

(d) For the payment of board and lodging to innkeepers, and to traders for the value of goods sold to others who are not traders, or who, being such, are engaged in a different trade.

The time of the prescription of actions referred to in the three preceding sections shall be counted from the time the respective services have ceased to be rendered.

The following actions outlaw in one year.

(a) Actions to recover or retain possession.

(b) Actions to demand civil liability for grave insults or calumny, and for obligations arising from fault or negligence.

Marriage. Its Nullity. Civil marriages are the only ones valid in Cuba. These are executed before the municipal judges of the domicile of the parties as officials of the civil registry.

Digitized for FRASER
https://fraser.stlouisfed.org
Federal Reserve Bank of St. Louis

Parties might contract church marriages, but these have no validity at law.

The marriage may be declared null and void in the following cases 1. Males under fourteen and females under twelve years of age. 2. Persons non compos mentis. 3. Impotent person. 4. Those persons who are already married. 5. Ascendants and descendants whether by consanguinity or affinity. 6. Collateral by consanguinity within the second decree. 7. The adopter with the adopted person, the latter with the surviving spouse or this with the surviving spouse of the adopted person. 8. Those who have been convicted as principal or as accomplices for the death of a former spouse.

The marriage may be annulled also if contracted by error in the person or by force or between abductor and abducted while in his power and the one contracted without the intervention of the judge or the presence of the witnesses required by law.

Married Women. Persons on contracting marriage may make their own agreements as to the management and administration of their property, but should they fail to make such provision they are understood as having married under the community agreement by which husband and wife become equal owners in the property acquired by the couple during coverture, and each has a right to one-half of said property at the time of the dissolution of the marriage bond, whether from death or other cause.

The husband is the representative of the wife, and without his permission she may make no contracts except that which she may have received as dot or which is classed as paraphernal.

The wife's property is divided as follows

(a) Her dot, which is composed of property given the wife because of her marriage, and such property acquired by her thereafter by gift, inheritance or bequest, provided that it be given as a part of the dot.

(b) Paraphernal property, which is that property held by the wife at the time of her marriage, not included in the dot, and that which she acquired thereafter with her own capital. The husband may not dispose of this paraphernal property nor may he exercise any act with reference to it without the consent of the wife. The wife has the legal administration of such paraphernal property.

While the husband is the legal representative of the wife he may not dispose of the property constituting her dot without securing her fully as to any loss.

In cases of separation, the wife may acquire the sole disposition and control of her dot, her paraphernal property and her one-half of the capital of the community property.

Mortgages: Registry of Deeds: Land Leases: Etc. All transactions regarding real property are governed by the mortgage law which provides a plan of registration similar in essence to the Torrens System. All sales of real property or real rights, leases for a period of more than six years, all mortgages, and all rights in such property, as easements, servitors, liens, encumbrances, usufructs, and the extinction or cancellation of such rights in order to prejudice third persons, must be recorded in the registry of property for the judicial district in which the realty is situated.

The registrars are empowered to examine all documents submitted to them for registry, and may suspend the inscription of or reject such as in their opinion do not comply with the law. From these decisions there lies an appeal to the civil courts.

Registrars are appointed for life or during good behavior, are under heavy bond, must be attorneys at law, are paid solely by fees, and are responsible for their errors.

Defects in title not apparent in the registry do not affect innocent purchasers, hence the registry is an absolute guarantee.

All mortgages and all documents subject to registry must be executed under seal of a notary public, and must pay the government transfer tax before being recorded

Foreclosure proceedings

The mortgage must contain a clause fixing a sum as the value of the property in case of foreclosure. With this deed and a certificate from the registrar to the effect that the mortgage is still in force, the creditor makes application to the court for the sale of the property by public auction. Notice is served on the debtor if his residence is known; if not, he is served by notice on the person in care of property and he is allowed thirty days within which to pay debt and costs. At the expiration of said thirty days the property is advertised for sale in the "Official Gazette" the sale taking place twenty days thereafter. The mortgage creditor may bid in the property.

Notaries Public. Notaries public are appointed by the President not to exceed one for every three thousand five hundred inhabitants in the city of Havana and five thousand inhabitants in any other city of the Republic; they must be attorneys at law, and their appointments are for life, unless removed for misconduct. They are required to furnish heavy bond and are liable for errors due to carelessness, gross ignorance or wilful fault.

(See Documents, Deeds. Notes and Bills of Exchange.)

Notes and Bills of Exchange. Cuban law is absolutely and extremely technical on notes and bills of exchange.

A draft, or bill of exchange in order to be regarded as such in court, must comply with all of the following requirements (1) Place, day month and year of which drawn. (2) Date when due.. (3) Name of payee. (4) Amount. (5) Consideration, either of value received, value on account or value understood. (6) Name of the person from whom the amount of the draft is received or to whose account it is charged if such person be other than the payee. (7) Name of the person on whom drawn, as well as his domicile. (8) Signature of the drawer, or that of his duly authorized agent.

If the draft lacks any of the foregoing requirements it will be considered as a promissory note in favor of the holder, and for the account of the drawer.

There are no days of grace.

Endorsement

Endorsement must contain (1) Name of endorsee. (2) Consideration. (3) Name of person or firm from whom consideration is received or to whose account it is charged, if such person should be other than the one to whom the draft is endorsed. (4) Date. (5) Signature of endorser, or of his duly authorized attorney in fact.

If all of the requirements in endorsement are complied with, but date is omitted, the title does not pass, but endorsee holds draft as collecting agent.

Blank endorsements, i. e. those endorsements which have nothing other than the signature, and those endorsements in which the consideration is omitted but which contain in all of the other requirements transfer title to the draft.

Foreign banks and merchants dealing with Cuba, would be wise in observing the law strictly. Note that the draft contains all of the legal requirements and especially, that the endorsement is full. As has been said, the blank endorsement transfers title but Cuban courts have been in some considerable controversy over this point and it is safer to insert all details as above indicated.

Drafts not issued to order cannot be endorsed nor those which have matured and are dishonored.

An accepted draft properly protested is considered by Cuban law as an executory document, i. e., a document on which attachment may be levied by the creditor without presenting bond prior to filing suit.

Pledge. Personal property can be affected only by a contract or pledge, which is in substance the old Roman "Pignorario" virtually a contract of pawn. By this contract the possession of the chattel must be in the creditor, or in the third person elected by the parties.

A pledge is not effective against a third person unless the evidence of its date does not appear in a public instrument.

The creditor cannot dispose of or appropriate the chattels pledged.

When the obligation is due and unpaid the pledged property may be sold at a public auction before a notary public previous notice to the debtor.

Power of Attorney. Power of attorney must be special and specific. A general power of attorney to "act for me and in my place and stead, to perform all acts and things" etc., is valueless.

The power must show (1) Name, age, personal status (married, single or widower, and if married, to first or second wife), occupation and residence of grantor. (2) Name and residence of agent. (3) A specific statement of powers conferred upon agent designating same separately.

A power to sell and mortgage and "otherwise dispose of or deal with property" does not include power to lease; one to sign does not include endorsing; a power to collect does not cover power to sue, etc.

In case of a power of attorney given by a partnership, the document must of itself show the following (1) That the partnership is lawfully organized according to the laws of its domicile. (2) That the person executing the power of attorney in the name of the firm is an active partner at time of signing power, and possesses, in accordance with the partnership, articles of agreement the legal authority to sign the firm's name and bind it by his act as partner.

In the case of a power of attorney executed by a stock company, the document must show (1) As in all other powers the name and description of person executing document in representation of company. (2) The official capacity. (3) His authorization by the board of directors for the execution of the document, generally shown by inserting in the power a literal copy of the minutes of the meeting in which he was authorized to execute it. (4) The powers of the board of directors to manage the business and affairs of the company i. e., the insertion in the document of those clauses of the by-laws or articles of incorporation which entrust the management to the board. (5) That the meeting of the board or executive committee or other functionaries charged with the company administration in which the resolution was passed authorizing the execution of such power of attorney by one of its officials was properly called, that the necessary quorum was present and that the directors acting were elected such according to law. (6) That the company was organized in accordance with the laws of its domicile and is in existence on the date of execution of the power of attorney. (7) Specific statement of powers granted to agent.

The document must be executed before a notary public and the signature and seal of the notary public authenticated by a Cuban consul before it may be effective in Cuba.

The Code of Commerce provides that all powers of attorney to agents or managers of merchants shall be recorded in the Mercantile Registry.

Wills. All persons of either sex of fourteen years of age or more, with the exception of those not in possession of their mental faculties, may dispose of their property by will. Insane persons may do so in lucid intervals on certificate of two physicians to the temporary sanity of testator.

Wills may be either holographic, open or sealed, or special, such as military, marine or foreign.

The holographic will is that written by the testator personally setting forth day, month and year, and his signature. Only adults may make a holographic will. Such a will must be filed with the court of first instance of testator's last domicile or residence within five years after decease or will not be valid.

The open will is that executed in the presence of a notary public and of three witnesses who must sign together with testator.

In case of imminent danger of death this will may be executed in the presence of five witnesses but without the notary.

The sealed or closed will may be written by the testator or any other person, the date and place being expressed. If written in testator's handwriting he will paraph each page and sign at end; if written by another, his full signature must appear on each page. This will once signed is placed in an envelope and so sealed that its contents may not be read except by breaking the seal and is then taken to a notary public who, in the presence of five witnesses receives the deposition of testator that such sealed package contains his will, and writes on the envelope this statement also that all of the legal formalities have been observed. The will is then returned to the testator, the notary retaining a copy of the statement made by testator.

Military and marine wills may be made before officers of the army and marine.

Cubans resident in foreign countries may execute their wills either before Cuban diplomatic or consular authorities in accordance with Cuban law, or may observe the laws of the country in which they reside as to the form of will.

Persons having descendants or ascendants living or husband or wife, may not dispose of such portion of their property as by operation of law, vests in such descendants or ascendants on their decease.

Children and legitimate descendants are entitled to two-thirds of the property of the parent who may therefore, only dispose truly of the remaining one-third.

If there be no children but only ascendants, their legal portion, of which the will may not deprive them, is one-half the hereditary estate.

The widow or widower who on the death of his other spouse is not divorced (separated) shall have a right to a portion in usufruct equal to that corresponidng by way of legal portion to each of the legitimate children or descendants; if there be only one surviving child or descendant the surviving spouse shall have the usufruct of one-third of the estate, and the same portion in case there be no descendants, but only ascendants; if there are neither descendants nor ascendants the survivor receives one-half of the estate in usufruct as his or her legal portion.

The law also makes special provisions for natural children who may have been acknowledged.

Probate:

The open will needs no probate nor judicial sanction unless attacked. The holographic will must be filed with the court of first instance of testator's last domicile or residence and on proof of testator's decease is opened by the court in the presence of the family and relatives who shall be notified. The evidence of three witnesses who knew testator's handwriting or in default of same of handwriting experts, if satisfactory will be sufficient to prove will.

Closed wills must also be probated. The proceeding being similar to that employed in case of holographic wills. The notary and witnesses before whom testator declared said closed packet to contain his will are examined, if alive, and if not or if not found other witnesses acquainted with testators. On approving will the court orders it filed, after being opened and read with a notary public.

There are no further probate proceedings except in cases of contest

or FRASER
er.stlouisfed.org
eserve Bank of St. Louis