KINGDOM OF SIAM.

DRAFTS

OF

CIVIL AND COMMERCIAL LAWS.

CIVIL CODE: Book on Capacity of Persons.
Law on Family Registration.

CIVIL CODE: Book on Things.
Law on Conflict of Laws.

ANNEXES

Law on Civil Procedure — Bankruptcy Act.

1919

DRAFT CIVIL and COMMERCIAL CODE

BOOK

ON

Capacity of Persons.

CONTENTS.

Division II. — Juristic Persons.

PRELIMINARY. [1]

1. — There are two kinds of persons: natural persons and juristic persons.

DIVISION I.

NATURAL PERSONS.

2. — In this division “person” means only a natural person.

TITLE I.
General Provisions.

CHAPTER I.

AGE.

3. — A person who has not completed his twentieth year of age is a minor.

4. — A person who married before having completed his twentieth year of age ceases to be a minor.

5. — When a person ceases to be a minor he is said to be of full age.

6. — Whenever reference is made in the law to the age of a person, it is meant that the whole number of years referred to shall have elapsed since the birth of such person.

7. — If it is impossible to ascertain the date of the birth of a person, his age shall be calculated from the last day of the official year during which such birth took place.

CHAPTER II. [2]

NAME.

8. — Every person has a name.

9. — The name of a person consists of a personal name and a family name.

10. — The personal name is the name which has been given to the child at birth.

11. — The family name is the name of the family, which passes from father to child.

12. — A married woman retains her personal name and family name, and adds to them the family name of her husband.

13. — When the father of a person is unknown such person bears the family name of his mother.

14. — Neither a family name nor a personal name can be changed except by special permission given by the Minister responsible for the local administration.

15. — When the family name of a person is changed, every descendant of that person who bears that family name also changes it.

16. — A person to whom a non-hereditary title is granted by His Majesty the King retains his former name for use in his private affairs and for transmission to his descendants.

17. — A person whose name is used by another person who is not entitled to it can apply for an order of the Court restraining such other person from the use of that name. He is also entitled to compensation for any injury which he may suffer in consequence of such use.

18. — The right to apply for an order of the Court or to claim compensation in connection with the unlawful use of a name is extinguished by prescription one year after the day when the plaintiff knew of the use, or five years after the day when the use began. [3]

CHAPTER III.

SIGNATURE.

19. — If a person is in the habit of affixing a seal in lieu of signature, the affixing of such seal is equivalent to a signature.

20. — A finger print, cross or other such mark affixed to a document is equivalent to a signature if it is certified by the signature of two witnesses.

CHAPTER IV.

WITNESSES.

21. — Whenever the law requires that a document, signature, finger print, mark of statement be certified by witnesses, the witnesses shall sign it. Only such persons may be witnesses as are of full age and know how to sign.

CHAPTER V.

RESIDENCE.

22. — The residence of a person is the place where such person dwells.

23. — When a person is engaged in a trade or business his residence, for all purposes connected with his trade or business, is the place where he exercises that trade or business. [4]

CHAPTER VI.

DISAPPEARANCE.

24. — If a person has left his residence and it is uncertain whether he is living or dead, the Public Prosecutor or any interested person may, after

one year has elapsed from the latest intelligence received, apply to the Court for an order appointing a manager of the property of that person.

25 — If the absent person had appointed an agent with general authority, the application provided by the foregoing section shall be granted only if it appears that the management of the property by the agent is likely to cause injury to the absent person.

26. — The agent appointed with general authority by the absent person may apply to the Court for an extension of his authority if it is necessary to do any act which is beyond the scope of such authority.

27. — The manager appointed by the Court must make an inventory of the property of the absent person at the time when he assumes its management; such inventory shall be made in the presence of, and signed by, two witnesses.

28. — The manager has the powers of an agent with general authority as described in the Book on Obligations.

He can, with the previous consent of the Court, do any other act relating to the property of the absent person. [5]

29. — If the absent person had appointed an agent with special authority, the manager cannot interfere with such special agency, but he can apply to the Court for an order removing the agent if it appears that his management is likely to cause injury to the absent person.

30. — The Court may, at any time, of its own motion or on the application of the Public Prosecutor or of any interested person :

1) Require the manager to give security for the management and return of the property entrusted to him;

2) Require him to give information as to the condition of the same property;

3) Remove him for reasonable cause and appoint another manager in his stead.

31. — The Court may order that the manager shall receive a remuneration to be paid out of the property of the absent person.

32. — The authority of the manager is extinguished in the following cases :

1) By the return of the absent person ;

2) By the death of the absent person being made certain;

3) By the Court removing the manager ;

4) By the resignation or the death of the manager;

5) By the declaration of disappearance as provided subsequently.

33. — In so far as they are not contrary to or inconsistent with the provisions of this Chapter VI the provisions of the Book on Obligations concerning Agency apply to the management of the property of the absent person. [6]

34. — If a person has left his residence and it has been uncertain for seven years whether he is living or dead, the Court may, on the application of the Public Prosecutor or of any interested person, make an order declaring that such person has disappeared.

The above period of seven years is reduced to three years when the last reliable evidence shows that the absent person was in a dangerous peril of his life such as having been involved in a shipwreck or in a war.

35. — When the order of the Court declaring that a person has disappeared has become final, such person is deemed to have died.

His estate shall devolve on his heirs according to the Law on Inheritance.

36. — When the whole or part of the estate of the disappeared person has been transferred to his heirs and the disappeared person comes back, the heirs are bound to return to him such estate or part of the estate according to such provisions of the Book on Obligations concerning restitution for undue enrichment as refer to restitutions made by persons in good faith.

37. — The right to claim the return of the whole or part of the estate as provided by the foregoing section is extinguished by prescription one year after the day when the disappeared person has come back.

TITLE II.
Incapacitated Persons.

[7]

CHAPTER I.

MARRIED WOMEN

38. — The capacity of married women is governed by the Law on Family.

CHAPTER II.

MINORS.

I. — REPRESENTATION OF MINORS.

39. — The lawful representative of a minor is the person who exercises parental power over him or, in the absence of such person, his guardian.

1°. REPRESENTATION BY PARENT.

40. — The parental power belongs to the father.

41. — The parental power is exercised by the mother in any of the following cases:

1) if the father is unknown;

2) if the father is dead;

3) if the father is absent, or ill, or deprived of liberty, or otherwise unable to exercise his power ;

4) if the father has been deprived of his parental power by an order of the Court;

5) in case of divorce, if the minor is in the custody of the mother.

42. — If the parent who exercises parental power illtreats the minor or mismanages his property, or leads a disreputable life, or has been [8]

sentenced to imprisonment for more than one year for an offence punishable under Book II. Titles 1, 5, 6, 7, 8 or 9 of the Penal Code, the Court may deprive him of his parental power on application of the Public Prosecutor or of any person interested.

43. — A person who has been deprived of his parental power may resume it by order of the Court if the reason for such deprivation ceases to exist.

2°. REPRESENTATION BY GUARDIAN.

44. — If, owing to the death of both parents or to any other cause, there is no parent who exercises parental power, the minor must be provided with a guardian.

45. — A guardian can be appointed by will of the parent who last exercised the parental power.

46. — If there is no guardian appointed by will or if the guardian appointed by will refuses the guardianship, the guardian shall be the person who assumes such position by voluntarily taking care of the person and property of the minor.

47. — If no person voluntarily assumes the guardianship, a guardian shall be appointed by the Court of its own motion or on application of the Public Prosecutor or of any interested person.

48. — The order of the Court appointing a guardian to a minor shall be published in the Government Gazette by the care of the Court.

49. — The Court shall appoint as guardian a person fit to take care of the person and property of the minor.

As far as possible, the Court shall appoint as guardian an ascendant or collateral of the minor. [9]

50. — A guardian may refuse or resign the guardianship.

51. — The Court may, of its own motion or on application of the Public Prosecutor or of any interested person, remove a guardian for reasonable cause and appoint another guardian in his stead.

II. — MANAGEMENT OF THE MINOR'S PROPERTY BY HIS LAWFUL REPRESENTATIVE.

1°. MANAGEMENT BY PARENT.

52. — Acts done by the parent who exercises parental power within the limits of his power are binding on the minor.

Notifications made by him or to him are deemed to be notifications made by or to the minor.

53. — The parent who exercises parental power is the manager of the property of the minor.

He must manage such property with the same care as a person of ordinary prudence.

54. — As long as a parent exercises parental power, he is entitled to the earnings of the minor and to the income of the property belonging to the minor.

55. — The parent who exercises parental power cannot enter into any of the following contracts with regard to the property of the minor, except with the consent of the Court:

1) Sale or mortgage of immovable property,

2) Loan of money, [10]

3) Compromise.

56. — The parent who exercises parental power cannot enter into any contract with the minor, except with the consent of the Court.

The Court shall not give its consent unless it is satisfied that the contract will benefit the minor.

57. — The parent who exercises parental power cannot dispose gratuitously of the property of the minor except for performing on his behalf religious or social duties, according to custom.

58. — The parent who exercises parental power cannot do on behalf of the minor an act which by reason of its nature cannot be done through a representative, such as marrying, or making a will, or tendering an oath.

59. — An act done by the parent who exercises parental power without the consent of the Court, when such consent was required (S. 55 and 56),

is voidable.

The following persons only can claim cancellation of such act or ratify it:

1) A new lawful representative of the minor, provided he is acting with the consent of the Court, or

2) The minor himself, after he has become of full age, or

3) His heirs.

60. — An act done by the parent who exercises parental power contrary to the provisions of section 57 is voidable. [11]

The following persons only can claim cancellation of such act or ratify it:

1) The minor, after he has become of full age, or

2) His heirs.

Cancellation may be claimed also by the lawful representative.

61. — The right to claim cancellation of a voidable act done by the parent who exercises parental power is extinguished by prescription five years after the minor becomes of full age.

62. — An act done by the parent who exercises parental power contrary to the provisions of Section 58 is void.

63. — When a parent ceases to exercise parental power, he is bound to return the property which was under his management and to render proper accounts of the management.

He is liable to the minor for any injury resulting from his having not managed the property of the minor with the same care as a person of ordinary prudence. . 64.—The property must be delivered and the accounts rendered to the child if he has become of full age, or to his new lawful representative, or to his heirs, as the case may be.

64. — The property must be delivered and the accounts rendered to the child if he has become of full age, or to his new lawful representative, or to his heirs, as the case may be.

65. — If the parent who exercises parental power dies, his heirs are bound by the provisions of the two foregoing sections. [12]

66. — An action in connection with the management of the property of a minor by parent can with the consent of the Court be entered by the child, or on his behalf, against the parent.

67. — The right to enter an action in connection with the management of the property of a minor by parent is extinguished by prescription five years after the minor became of full age.

2°. MANAGEMENT BY GUARDIAN.

68. — The guardian of a minor is not entitled to remuneration.

69. — The power of management and representation of a guardian is governed, *mutatis mutandis*, by sections 52 to 62 concerning parental power, but is subject to the limitations provided by the three following sections.

70. — The guardian must make an inventory of the property at the time when he assumes its management : such inventory shall be made in the presence of, and signed by, two witnesses.

71. — The Court may, at any time, of its own motion or on application of the Public Prosecutor or of any interested person, require the guardian :

1) to give information as to the condition of the property of the minor ;

2) to give security for the management and return of the same property.

72. — The guardian is entitled only to such part of the earnings of the minor and of the income of his property as is necessary for the support and education of the minor. [13]

He must account to the minor for the surplus.

73 — On extinction of guardianship the return of the property which was under the management of the guardian and the settlement of accounts are governed, *mutatis mutandis*, by sections 63 to 67 concerning parental power.

III. — ACTS DONE BY A MINOR.

74. — In so far as he is admitted to do so by the special laws relating thereto, a minor can do by himself any act which by reason of its nature cannot be done through a representative, such as marrying, making a will or tendering an oath.

75. — A minor can do by himself all acts which are customary in the ordinary course of daily life having due regard to his age, means and position.

76. — Acts other than those described in the two precedent sections are valid if done by the minor with the assistance of his lawful representative and, in the cases described in sections 55 and 56, with the previous consent of the Court.

77. — An act done by the minor beyond the scope of his capacity as described by the two precedent sections is voidable only if its consequences are likely to cause injury to the minor.

78. — Cancellation of an act done by the minor beyond the scope of his capacity as provided by section 74 is governed by the special laws relating thereto. [14]

79. — If the minor has used fraudulent means to cause it to be believed that he is of full age, his act cannot be cancelled on the ground of want of capacity.

80. — If an act done by a minor is voidable the following persons only can claim its cancellation or ratify it :

1) His lawful representative ; or

2) The minor himself after he has become of full age; or

3) His heirs.

81. — The right to claim cancellation of a voidable act done by the minor is extinguished by prescription after five years from the date of such act, subject to the general provisions concerning prescription in the Book on Obligations.

CHAPTER III.
PERSONS OF UNSOUND MIND.

I. — REPRESENTATION OF PERSONS OF UNSOUND MIND.

82. — A person of unsound mind must be provided with a lawful representative.

83. — The lawful representative of a person of unsound mind who is married is his or her spouse.

If the person of unsound mind is not married, his lawful representative is his father or, if he has no father, his mother or, if he has no parents, his guardian. [15]

84. — The guardian of a person of unsound mind shall be the person who assumes such position by voluntarily taking care of his person and property.

85. — If no person voluntarily assumes the guardianship, a guardian shall be appointed by the Court, of its own motion or on the application of the Public Prosecutor or of any interested person.

86.— The order of the Court appointing a guardian to a person of unsound mind shall be published in the Government Gazette by the care of the Court.

87. — A guardian may refuse or resign the guardianship.

88.—The Court may, of its own motion or on the application of the Public Prosecutor or of any interested person, remove a lawful representative for a reasonable cause and appoint another lawful representative in his stead.

89.—The duties of the lawful representative of a person of unsound mind are to take care of him, to support him, to keep him in safe custody if necessary, and to manage his property.

II. — MANAGEMENT OF THE PROPERTY OF A PERSON OF UNSOUND MIND BY HIS LAWFUL REPRESENTATIVE.

90. — The Court may order that the guardian of a person of unsound mind shall receive a remuneration, to be paid out of the property of such person.

91. — The power of management and representation of the lawful representative of a person of unsound mind is governed, *mutatis mutandis*, by sections 52, 53, 55 to 62, 70 to 72 concerning parental power and guardianship of minors. [16]

92. — On extinction of lawful representation, the return of the property which was under the management of the lawful representative and the settlement of accounts are governed, *mutatis mutandis*, by sections 63 to 67 concerning parental power.

III. — ACTS DONE BY A PERSON OF UNSOUND MIND.

93. — An act done by a person of unsound mind is voidable.

94. — If an act is done by a person of unsound mind, the following persons only can claim its cancellation or ratify it :

1) His lawful representative, or

2) The person himself, if he has ceased to be of unsound mind, or

3) His heirs.

95. — The right to claim the cancellation of an act done by a person who has been of unsound mind, during his unsoundness of mind is extinguished by prescription after five years from the date of the act, subject to the general provisions concerning prescription in the Book on Obligations.

DIVISION II. [17]

JURISTIC PERSONS.

TITLE I.
General Provisions.

96. — There are no juristic persons except those created by law and those formed in accordance with the provisions of a law.

97. — A juristic person enjoys the same rights and is subjected to the same liabilities as a natural person.

98. — Rights and liabilities which, by reason of their nature, may be enjoyed or incurred by natural persons only cannot be enjoyed or incurred by juristic persons.

99. — The following are juristic persons:

1) Public bodies,

2) Monasteries,

3) Registered partnerships,

4) Limited companies,

5) Associations,

6) Authorized foundations.

100. — The Ministries, Government Departments, Local Administration and Municipal bodies are Public bodies.

101. — The organization of Public bodies is governed by the Laws and Regulations relating thereto.

102. — In its relations with third persons, a Public body is represented by its Head. The Head of every Public body may sue and be sued in such capacity, except that actions by or against a Ministry shall be entered in the name of the Ministry. [18]

103. — The organization of the monasteries is governed by the Laws and Regulations relating thereto.

The organization of registered partnerships, limited companies and associations is governed by the Book on Obligations.

TITLE II.
Foundations.

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104. — A "foundation" consists of property appropriated to charitable, religious, scientific, literary or other object for public benefit.

105. — The person who institutes the foundation and provides the property is called the “founder”.

106. — No foundation shall exist as a juristic person unless :

1) it be created by an instrument in writing :

2) it be authorized by the Government.

107. — The instrument creating a foundation must contain the following particulars :

1) The name of the foundation,

2) Its object,

3) The address, if possible, of its principal office,

4) The rules for its management,

5) The appointment of its first managers.

108. — Authorization of foundation lies entirely in the discretion of the Government. [19]

109. — Authorization may be granted subject to such conditions as the Government may think fit.

110. — On authorization being granted, the Government shall cause to be published in the Government Gazette a summary of the particulars of the foundation.

111. — In its relations with third persons an authorized foundation is represented by its managers.

The managers may sue and be sued in such capacity.

112. — The relations between an authorized foundation, its managers and third persons are governed by the provisions of the Book on

Obligations concerning Agency.

113. — Any vacancy occurring among the managers may be filled by the remaining managers. Questions arising at a meeting of managers shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a casting vote.

114. — Every foundation is subject to supervision of the Government. Any official commissioned to that effect by the Government shall have access to the books and accounts of the foundation at any reasonable time. He can examine the managers and any agents or employees of the foundation on any matters relating to it.

115. — An authorized foundation is dissolved : [20]

1) In the cases provided by the instrument of foundation, or

2) On its object being fulfilled or becoming impossible, or

3) On the foundation becoming bankrupt, or

4) By an order of the Court as provided by the following section.

116. — The Court may, on application of the Public Prosecutor or of any interested person, order an authorized foundation to be dissolved:

1) If such foundation commits acts contrary to law or to public policy or to the safety of persons or property, or

2) If for any cause whatsoever the foundation cannot be managed any longer, or

3) If the foundation acts contrary to the provisions of the instrument of foundation, or to the intention of the founder, or to the conditions under which the Government has granted the authorization.

117. — The provisions of the Book on Obligations concerning liquidation of partnerships and companies apply to the liquidation of foundations, *mutatis mutandis*.

118. — Every order of the Court dissolving an authorized foundation shall contain the appointment of liquidators of the foundation.

119. — After liquidation the remaining assets, if any, shall be [21] transferred to such juristic person as may have been designated by the instrument of foundation.

120. — If no juristic person has been so designated, the remaining assets become the property of the State.

DRAFT LAW

ON

Family Registration.

CONTENTS.

DRAFT — LAW.
ON FAMILY REGISTRATION.

[1]

1. — This Law shall be cited as the “Law on Family Registration, year 26 …”.

2. — It shall come into force on the …… day of …… 26 …

3. — The Laws and usages concerning Marriage, Divorce, Parent and Child, and Inheritance remain in force in so far as they are not modified by the present Law.

TITLE I.
Family Registrars.

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4. — There shall be Family Registrars for the registration of births, deaths, marriages, divorces, and acknowledgements and adoptions of children.

5. — All registrations relating to persons of Royal Blood holding by birth the rank of Mom Chao or upwards, or relating to persons living in the Royal Palaces, shall be made at the Ministry of the Royal Household.

6. — Any interested person shall be entitled to obtain from a Registrar a certified copy of any entry in a Family Register.

TITLE II.
Registration of Births and Deaths.

[2]

CHAPTER I.

BIRTHS.

7. — Every birth occurring within the limits of the Kingdom shall be reported to the local Family Registrar within fifteen days.

8. — The birth shall be reported by the father or the head of the house where it occurred, or by some person who was present at the birth.

9.The entry in the Register of Birth shall contain the following particulars:

1) the personal name, family name and sex of the child and place and date of birth;

2) the names, occupation and race of the father and mother of the child; if the father and mother are married, a mention to that effect shall be made in the Register;

3) the name and description of the informant;

4) the relation of the informant to the child.

10. — If the informant reports the birth of a child whose father is unknown, a statement to that effect shall be made in the Register.

11. — If the father and mother of the child are not married, the name of the father shall not be entered in the Register unless he agrees to it before the Registrar, and signs the register. The natural child is thereby acknowledged by his father.

[3]

12. — The father of the natural child may at any time acknowledge such child by a declaration made to the Registrar in the presence of two witnesses. The declaration shall be entered in the Register and the entry signed by the Registrar, the father and the witnesses.

An acknowledgement may also be declared in a will.

13. — The entry in the Register of Acknowledgements shall contain the following particulars:

1) the place of the acknowledgement;

2) the date of the entry;

3) the name and residence of the father and mother, and the name, age and residence of the child.

CHAPTER II.
DEATHS.

14. — Every death occurring within the limits of the Kingdom shall be reported to the local Family Registrar within twenty — four hours.

15. — The death shall be reported by the head of the house where it occurred, or by the parents, or by the surviving husband or wife, or by the nearest relative of the deceased living in the same locality.

16. — In the event of the discovery of the corpse of a person who has no relatives or who cannot be identified, it shall be the duty of the finder, or of the Kamnan, Phu-yai-ban or Police to at once report the same to the Registrar before or after an inquest has been held. [4]

17. — The entry in the Register of Deaths shall contain the following particulars:

1) the personal name, family name, sex, race, age, occupation and residence of the deceased and the date and cause of death;

2) a mention whether the deceased was married or unmarried; if the deceased was married, the name of the surviving husband or wife;

3) the name of the father and mother of the deceased;

4) the name and description of the informant;

5) the relation of the informant to the deceased.

18. — If a Registrar has any reason to suspect that a death reported to him was caused by violence, he shall forth with report the case to the nearest competent authority.

CHAPTER III.
GENERAL.

19. — If a birth or death takes place in any hospital, alms-house, barrack, temple, school, prison, police station or other such place, it shall be also the duty of the head of such place to report it to the Registrar.

20. — If a birth or death takes place on board a Siamese ship while at sea, it shall be the duty of the master of the ship to report it to the Registrar at the first Siamese port of call.

21. — A person whose duty it is to report a birth or death is not required to do so personally. A relative or other person may be deputed to do so. [5]

22. — Every entry shall be dated and shall be signed by the Registrar. The informant shall sign on the Register and the Registrar shall deliver to him a copy of the entry.

23. — Except for clerical errors, an entry of a birth or death may be corrected only on an order of the Court made after formal enquiry on a motion by any interested person.

24. — Whenever a birth or death is not reported or is reported after the period of time prescribed by this Law any person whose duty it was to report it shall be guilty of a petty offence punishable with fine not exceeding twelve baht.

TITLE III.
Marriage.

25. — After the coming into force of this Law no marriage shall be valid unless registered by the local Family Registrar in the presence of two witnesses.

26. — Before registering a marriage the Registrar shall ascertain:

1) that the man has completed his seventeenth year and the woman has completed her fifteenth year;

2) that the man and woman are not blood relations in the direct ascending or descending line, or brother and sister; [6]

3) that the man and woman appear to be of sound mind and agree to take each other as husband and wife.

27. — The Registrar shall also ascertain that the person or persons whose consent to the marriage is required by law agree to the marriage.

28. — If a person whose consent to a marriage is required by law is not present, the Registrar shall, before proceeding with the marriage, post at the door of his office a notice or “banns” stating the names, age and residence of the man and woman.

29. — The banns shall be posted for fifteen days. If at the expiration of the period of fifteen days no objection has been lodged by a person whose consent is required by law, the Registrar shall proceed with the registration.

30. — Should any of the conditions prescribed by Sections 26 to 29 be not complied with, the Registrar shall refuse to proceed with the registration.

31. — If the Registrar refuses to proceed with the registration of a marriage, the man or woman may apply to the Court by motion.

If the Court after formal enquiry is satisfied that the conditions required by law are complied with, the Court shall give an order to that effect, whereupon the Registrar shall proceed with the registration.

32. — The entry in the Register of Marriages shall contain the following particulars; [7]

1) the place and district of registration;

2) the date of the entry;

3) the personal name, family name, age and residence of each of the spouses;

4) the names and residence of the parents of the spouses; if a parent is dead or unknown, an entry to that effect shall be made in the Register.

33.—The entry in the Register must show that the Registrar has complied with the requirements of Sections 26 to 29.

34.—The entry in the Register shall be signed by the Registrar, the spouses and the witnesses. If any of the persons whose consent to the marriage is required by law is present, such person shall also sign in the Register.

35. — The spouses are married from the day of registration inclusive.

36. — Children born of registered wives are legitimate and have in the estate of their father the statutory rights of inheritance provided by law.

37. — The registration of marriage of the father and mother of a natural child after his birth, confers upon the child the status of a legitimate child as from date of birth.

38. — The acknowledgement of a natural child confers upon such child the status of a legitimate child.

39. — Whenever a child has been acknowledged by his father, the Court may, on application, order the father to pay for the maintenance of the mother such allowance as the Court may think fit. [8]

40. — Whenever a natural child has not been acknowledged by his father, the Court may, on application of the mother or guardian of such child and on proper evidence of parentage, order the father to pay for the maintenance of the child during minority such allowance as the Court may think fit.

The Court may also grant an allowance to the mother, on her application.

41. — An allowance to the mother of an acknowledged or natural child shall be refused or discontinued if she has married or is leading a disreputable life.

TITLE IV.
Divorce.

42. — From the day of the coming into force of this Law divorce may only be by mutual consent or by judgment of a Court.

43. — Divorce by mutual consent is invalid unless registered by the local Family Registrar in the presence of two witnesses.

44.—The entry of a divorce by mutual consent in the Register of Divorce shall contain the following particulars :

1) the place and district of registration ;

2) the date of entry;

3) the personal name, family name, age and residence of each of the spouses; [9]

4) the date or approximate date of the marriage;

5) the names and residence of the parents of the spouses ; if a parent is dead or unknown, an entry to that effect shall be made in the Register.

45. — The entry in the Register shall be signed by the Registrar, the spouses and two witnesses.

46. — The spouses are divorced from the day of registration inclusive.

TITLE V.
Adoption.

47. — No adoption is valid unless registered by the local Family Registrar in the presence of two witnesses.

48. — The entry in the Register of Adoption shall contain the following particulars :

1) the place of the registration ;

2) the date of entry;

3) the name, age and residence of the adoptor [=adopter] and of the adopted :

4) the name and residence of the parents of the adopted. If a parent is dead or unknown, an entry to that effect shall be made in the Register.

49. — If the parents of the adopted or one of them are living, or if the adopted is a minor under the care of a guardian, an entry in the Register shall be made to show that the parents or parent or guardian agree to the adoption. [10]

50. — If the adoptor or the adopted is married, an entry in the Register shall be made to show that his or her spouses agrees to the adoption.

If the adoption is made by husband and wife jointly, they shall be both entered as adoptors in the Register.

51. The entry in the Register must be signed by the Registrar, the adoptor, the adopted, their spouses, if any, and the witnesses.

52. — An adoption may be revoked by mutual consent of the adoptor and adopted provided that such revocation be registered by the local Family Registrar in the same form as the adoption.

DRAFT CIVIL and COMMERCIAL CODE.

BOOK

ON

Things.

CONTENTS.

ABBREVIATIONS and REFERENCES.

Can. — Canadian Civil Code.

Dika. — Jurisprudence of the Dika Court,

F. — French Civil Code.

G. — German Civil Code.

I. — Italian Civil Code.

J. — Japanese Civil Code.

Maroc or M. — Morocco Regulations (Dahir) on immovables.

S. — Swiss Civil Code.

T. — Tunis Civil and Commercial Code.

P. C. — Penal Code of Siam.

DIVISION I. [1]

General Provisions.

TITLE I.
Different kind of Things.

1. — Things are either immovable or movable.

F.516. G.90. J.86.

2. — All things that are not described by law as immovable are movable.

F.527, 528, 531, 532. S.653, 713. T.3, 4.

3. — The following things are immovable:

(1) land including water,

(2) buildings on land even made of wood or bamboo.

Siam Mortgage Act. 116 sect. 7. F.518. J.86. S.655. T.4.

4. — Any thing which, by nature, or according to custom or to the intention of the owner of another thing, is joined, fixed, adapted or attached to such other thing for its permanent use, keeping or exploitation is an appurtenance of the principal thing.

When the appurtenance is temporarily severed from the principal thing, it does not cease to be an appurtenance.

Any act disposing of the principal thing extends to the appurtenance unless there be any agreement to the contrary.

F. 524. G. 95, 97, 926. I. 413,414. J. 242. S. 644. [2]

Illustration: — The doors, shutters, rainpipes, locks and keys of a house, the fence of a garden-land, the machinery of a rice mill, being things which may be removed easily from one place to another, are movables. But they must be considered respectively by their nature, the custom or the owner's intention, as fixed to the house, garden land or mill for its permanent use, keeping or exploitation: they must therefore be deemed to be appurtenances of the said house, garden-land or mill, and consequently they become immovable; contrary for instance to the motorcar in the house garage, to the fuel stored in the mill for heating the boilers, to the agricultural implements used for cultivating the garden — land, to the goods stored for sale in a shop or godown, to the furniture placed in a house to be let furnished.

In consequence, if a creditor is allowed by judgment to attach the movables of his debtor (the value of such movables being considered by the Court as sufficient to meet the creditor's claim)

he shall not be allowed to attach the doors, shutters, etc. of his debtor's house, not the fence of his garden-land, not the machinery of his mill even though they have been removed temporarily from the house, garden-land or mill, e.g. for the purpose of repair. But he shall be allowed to attach them if they have been removed definitely, e.g. for being replaced by new ones. He shall be allowed also to attach the motorcar, fuel, implements, goods or furniture which may be found in his debtor's garage, mill, garden-land, shop, godown or house.

Likewise the buyer of a house, garden-land or rice mill shall be deemed, unless there is evidence to the contrary, to be the buyer of the house doors, shutters, etc., of the fence of the garden-land or of the machinery of the rice mill even if they have been removed temporarily for the purpose of repairs. He shall not be deemed to be the buyer of the same if they have been removed and replaced by new ones. The buyer of a house, shall no more be deemed to have bought the motorcar in the house garage; the sale of a garden shall not include the goods stored therein, etc. [3]

5. — Trees of all kind, when planted for an unlimited period of time, are appurtenances of the immovable on which they stand as long as they have not been cut. The fruit, leaves or flowers of a tree are appurtenances thereof as long as they have not been plucked off.

Harvest which may be cropped once or several times per year are movable.

Dika Nos. 140/120; 386/122.

6. — Animals are movable even when they are attached to an immovable for its exploitation.

F.522, 524, 528. T.8, 10.

7. — Profits denote the products of a thing as well as any benefits derived from the use of such thing:

G.100.

8. — Products of a thing denote all that which is obtained in the use of such thing according to its nature or destination, such as the fruit of the trees, the milk, hair, wool of the animals and their offspring.

Products are acquired at the time when they are severed from the thing. [4]

F.547, 582 to 586. S.643. G.99, 100. J.88, 89.

9. — Interests of a thing denotes money or gain (such as rent, dividend on shares, interest on loans and debentures, etc.) obtained periodically by the owner from another person for the use of the thing by such other person.

Interests are calculated and acquired by day. F. 586. J. 89.

10. — No real rights may be created other than those described by

law.[1]

F.543. J.175.

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(1) In addition to the real rights described in this Book (ownership, possession, servitudes), other real rights which are admitted by the Siamese legislation (lease, pledge, mortgage – which is never established by law – rights of retention and preferential rights) are dealt with in the Book on Obligations.

TITLE II.

Domain of the State.

11. — The domain of the State is divided into a public domain and a private domain.

F.538 to 541, 717. G.958, 959. J.230. S.659, 664, 718. T.1 Sept. 1885.

12. — The public domain of the State includes every kind of State properties which are, by nature or by designation, in use for the public interest or reserved for the common benefit, that is to say: [5]

(1) all the unoccupied lands the ownership of which has never been granted to private persons;

(2) the shore of the sea and harbours of any kind;

(3) the highways, State railways, lakes and waterways;

(4) the buildings and works of any kind erected by the State in the public interest or for common use (public palaces, fortresses and other military buildings, ministries, schools, museums, bridges, fountains, etc.);

(5) the following movables: arms and am munitions for the service of the Army, Navy, Police and Gendarmerie, Warships, War aeroplanes, Museum collections;

(6) all the things which are specifically included in the public domain by a Royal Decree.

13. — The private domain of the State includes every kind of State properties which are not included in the public domain under the foregoing Section, such as:

(1) lands surrendered or abandoned by their owner without any other person being lawfully entitled to claim a right of ownership over them;

(2) private palaces and buildings of any kind which are affected to the dwelling of officials, storing of movables belonging to the State, etc.; [6]

(3) movables used for the management of the Ministries, Departments or Offices of the State (such as furnitures of the Palaces or Administrative offices, cars or boats for public ceremonies and festivals, horses or other animals employed in the State services, etc.):

(4) properties which are abandoned, or the owner of which is unknown, or the owner of which died without heirs or legatees, or which are transferred or forfeited to the State by contract, by will or by the effect of the law;

(5) things lost or stolen the ownership of which devolves on the State according to the provisions of this Code or of the special laws relating thereto.

Illustration: — (4) Properties transferred or forfeited to the State by contract, by will or by the effect of law. Amongst such properties may be mentioned: the properties given by a tax-farmer as securities for the performance of his obligations and forfeited to the Treasury in case of non-performance of such obligations ,—the properties given or bequeathed by a private person to the State or to a State Service (Government school or hospital, etc.);the treasure trove;-the smuggled goods seized by Customs officials, etc.

14. — No prescription or usucapion can be set up by private persons against the rights of the State on its public domain. [7]

15. — Things included in the public domain of the State cannot be disposed of except by Royal Decree provided the grant by the State of unoccupied lands to private persons, remains governed by the provisions of the Land, Mining and Forestry Laws.

Any act disposing of things included in the public domain of the State which is made without Royal Decree, or any grant of unoccupied lands which is made without complying with the substantial formalities of the Land, Mining and Forestry Laws, is void.

16. — Servitudes established by law cannot be exercised upon an immovable of the public domain except with the consent of the Government.

Such consent can always be withdrawn.

17. — No distress is available on things belonging to the State, whether included in the public or in the private domain.

18. — Except in the case provided in the foregoing Section, the private domain of the State is governed by the same rules as things belonging to private persons.

Illustrations: — I. — A dies without any heir or legatee, leaving a piece of land which becames private property of the State. The competent government officials do not take any steps to show that such land is State's property. B settles upon it and cultivates it for twelve years. The Government officials who had hitherto made no objections to B's holding of the land, ask then for B's ejectment. B can validly set up usucapion against the State's claim.

II. — A, the owner of a piece of land, wishes to build a dwelling house on that land, but he is anxious to make sure beforehand that none of the adjoining owners will create on their respective lands an establishment likely to become a nuisance. He asks them to enter with him into an agreement creating on their lands a servitude to that effect. One of the adjoining pieces of land belongs to the private domain of the State. The competent government officials may enter with A into an agreement of the kind above referred to and render the State's land subject to a servitude.

[8]

III. — The competent government officials let to A a house belonging to the private domain of the State. The reciprocal rights and liabilities of the State and of A shall be governed by the provisions of law concerning hire of immovable property.

DIVISION II.

Ownership.

TITLE I.
Acquisition of Ownership.

CHAPTER I.
General Provisions.

19. — The ownership of things may be acquired: —

(1) by the effect of law, or [9]

(2) by way of occupation, or

(3) by way of usucapion, or

(4) by way of inheritance, or

(5) by the effect of obligations.

F.711, 712. I.710.

20. — The acquisition of ownership on immovables by the effect of obligations is complete only by registration of the right of the owner in the Land Register.

S.656, 1st.para., 657.

Illustration. — A sells to B a piece of land. Section 391 of the Code on Obligations provides that the sale of immovable properties is void unless made in accordance with the Land Laws. The Land Law (s. 41) specifies that such a sale must be made in writing and before the Registry Officer. The contract between A and B is valid, and the ownership of the piece of land transferred to B if these formalities are complied with.

21. — As regards immovables which are acquired by the effect of the law, by way of occupation or by way of inheritance the right of ownership devolves, even before the registration, upon the acquirer, when he has complied with the conditions required by law. But he cannot set up his right against third persons or dispose of it until registration has been made.

J.176, 177. S.656 §2, 657, 662.

Illustration. — A has obtained from the Court a writ of execution which empowers him to have an immovable belonging to B seized and sold by auction in execution of a judgment. C buys the immovable. C is the owner of the immovable. But he cannot mortgage or sell it to another person before he has had his right of ownership registered. Supposing that, before any such registration, B sells the immovable to N, who is not aware of the seizure and sale by auction of the immovable, C cannot set up his right against N if N has had his right registered.

[10]

22. — As regards immovables which are acquired by usucapion, the right of ownership devolves upon the possessor as soon as he has completed usucapion, and such possessor is then entitled to claim his registration as owner. But he cannot dispose of his right until registration has been made.

No transfer of immovables made by the original owner can be set up against the possessor after he has completed usucapion even when such possessor has not yet registered his right of ownership.

S.662.

Illustration. — A has possessed a piece of land belonging to B openly and without interruption, for more than ten years. A is entitled to claim his registration as owner of the piece of land, but, as long as such registration has not been made, he cannot sell or mortgage the land. If, during the eleventh year, B sells the land to C and C claims the ownership of the land, A can oppose against B the transferor his right of acquisition by way of usucapion and against C the transferee the defence of the present section

23. — The acquirer of an immovable from an original owner who is known is entitled to require from him bis assistance for the registration. [11]

24. — The Land Register shall contain a complete record of all rights and interests on the lands and buildings, of any transfer of ownership, and of lease over three years, mortgages, servitudes, preferential rights.

Immovables included in the public domain of the State are not registered in the Land Register unless real rights be created upon such immovables.

S.912, 943, 944, 958.

25. — The organization of Land Register and the formalities and proceedings concerning registration or cancellation, publicity, etc. are regulated by the special law relating thereto.

(Cf. S. Title XXV.)

26. — Ships or vessels having displacement of and over six tons, steam-launches or motor-boats having displacement of and over five tons, floating-houses and beasts of burden can be acquired only by registration of the rights of the owner, in the same manner and conditions as

immovables.

27. — The acquisition of ownership on movables other than those specified in the foregoing section cannot be set up against third persons unless the acquirer or transferee has taken possession of such movables.

J.178.

Illustration: — On the 1st of April 2460, A buys from B the goods and furniture filling the building which Buses both as shop and dwelling house. Instead of taking at once possession of the said goods and furniture, A finds more convenient to agree with B that delivery will take place on the 1st of May only. On the 19th of April, C, a creditor of B, applies to the Court for a bankruptcy order against B and for the appointment of an interim receiver. On the 20th of April the Court appoints the interim receiver and directs him to take immediate possession of B's property. On the 21st the interim receiver attaches B's property including the goods and furniture sold to d. As these goods and furniture were movables which can be acquired without registration and were found in B's possession, their attachment is valid; A cannot claim them back as his own property; he can only, as an ordinary creditor, apply to the official receiver for the payment of such debts as may be substantiated by the non-delivery of the goods and furniture purchased. [12]

CHAPTER II.

Acquisition by the Effect of law.

28. — Things are acquired by the effect of law when the transfer of ownership results from the application of a law with or without the consent of the owner, such as in case of expropriation or requisition by the State, or of execution on goods by the State or by a private person empowered to do so' by the Civil or Criminal Procedure Laws, or of forfeiture to the State by application of the Penal Laws.

29. — Alluvial deposit formed by nature or by the work of man on the bank of a waterway or lake becomes the property of the riparian owner of the land. [13]

Siam Dika Nos.160/119, 482/125.

Fr.1. 8 April 1898. S.351, 556 to 558. G.69 law introduct. Maroc, 19. S.659.

30. — Islands formed by alluvion in a lake or in a waterway, beds of waterways left dry, alluvion on the seashore and islands formed in the territorial waters become the property of the State.

F.557, 560. G.563. S.659. Maroc, 21.

31. — If an owner loses his land or a portion thereof in consequence of

a change in the course of a waterway, such owner is entitled by priority to a portion of the old bed of the waterway provided he applies within one year to the Land Officer for grant thereof and such grant is duly registered.

The old bed of the waterway is considered as an unoccupied land.

32. — If a person has in good faith constructed a building on a piece of land owned by another person, the owner of the land shall become owner of such building; he must pay compensation to the constructor for any increase of value accruing to the land from the building and he is entitled to no compensation from the constructor for any decrease of value resulting from the same.

Cf. Obligations S.118. F.555. J.196. Maroc 18. S.671, 673.

Illustration: — See under section 33.

33. — If a person has in bad faith constructed a building on a piece of land owned by another person, he must at his own expense put the land in its former condition. [14]

If it is impossible to put the land in its former condition or it would be damaged thereby, the owner of the land shall become the owner of the building; he shall be liable to no compensation to the constructor for any increase of value accruing to the land from the building, and he shall be entitled to compensation from him for any decrease of value resulting from the same.

Cf. Obligations, S.119. Maroc. 18(1). S.672.

Illustrations for Sections 32 and 33: — A dies. No will being found, his estate devolves on B, who is the nearest statutory heir of the deceased. B builds a house on a piece of land included in A's estate. Then C, who was absent at the time of A's death, comes back, produces a will made by A in his favour and obtains from the Courts a final judgment declaring that he is the person on whom A's estate must devolve and ordering B to return the said estate to C. B has built his house on a land which belongs, not to him, but to C. If it is proved that he did not know of A's will in favour of C, he must be considered as being in good faith and S. 32 shall apply. If on the contrary, it is established that he knew of the will and kept it secret, he shall be considered as being in bad faith and Section 33 shall apply.

34. — If the conditional owner of a piece of land has constructed a building on it and the land becomes afterwards the property of another person by the effect of the condition, he may either put the property in its former condition at his own expense, or deliver it in such condition as it is; in the latter case, he shall be entitled to compensation from the new owner of the land for any increase of value accruing to the land from the building, but he shall be liable to compensation to him for any decrease of value resulting from the same. [15]

Cf. Dika No. 259/121.

Illustration: — A has sold a piece of land to B with a right of redemption. B is only the conditional owner of the land, that is to say, as long as the time for redemption has not elapsed, he is the owner of the land only under the condition that A will not exercise his right of redemption. If B builds a house on that land before the time for redemption has elapsed and A redeems the land, B has built his house on a land which has become the property of another person and S. 34 applies.

B is entitled either to remove the house at his own expense, or to leave it to A. If B leaves it, he is entitled to receive from A a compensation amounting to the increase of value. If there has been a decrease of value, because for instance B has pulled down an existing house, B is liable to compensation to A.

35. — The three foregoing Sections apply *mutatis mutandis* to a person who, instead of constructing a building, has made a plantation or any other kind of work.

However, if the yearly harvest or crop is still to be made, the owner of the land must either allow the person in good faith or the conditional owner who has made the plantation to remain in possession of such land up to the time of the harvest or crop on payment of compensation based on the rental value of the same, or take at once possession of the land on payment to the other party of compensation for the loss of the harvest or crop. [16]

F.555. S.678.

36. — When the owner of a piece of land has in good faith constructed buildings on such land or made plantations or any other works from materials belonging to another person, he becomes the owner of such materials, but the other person is entitled to the payment of the value of those materials and compensation for injury if any.

F.554. Maroc. 17.

Illustration. — I. — A who wants to build a godown has ordered from B 500 sheet of corrugated iron. In consequence of a misunderstanding, the agent of A takes from B 500 sheet which had been delivered to C (e.g., loaded in a boat belonging to C) and were C's property. When the mistake is detected, the 500 sheet removed by A's agent have already been cut, pierced and screwed to the framework of A's godown. A has built his godown with materials belonging to C. A shall not be compelled to remove the sheet of corrugated iron and to return them to C; but he shall have to pay compensation to for any injury suffered by C in consequence of the mistake made by A's agent; e.g., he shall have to repay to C the purchase money paid by C to B; if C cannot find 500 new sheet of corrugated iron but at a higher price than that paid for those removed by A's agent, A shall have to pay the difference; if C is a contractor and has been unduly delayed by the mistake of A's agent in the performance of a contract so that he has been compelled to pay a penalty clause, A shall have to repay to C that penalty clause.

II. — A who wants to erect a landing-stage on the river in front of his compound cuts down some trees which he believes to be on his own land. In fact some of these trees were on B's land. When the mistake is detected, the trees have already been cut and used for the erection of the landing-stage. A has built his landing-stage with materials belonging to B. He shall not be compelled to pull down the landing-stage to return to B the wood belonging to the latter but he shall have to pay to B compensation for any injury suffered by B in consequence of A's mistake;

e.g. he shall have to pay to B the value of the trees cut on B's land.

37. — If several movable things, belonging to different owners have been joined by the consent of such owners, and the union is such that the things can no more be severed from each other without injury or that the separation would entail excessive expense, the ownership of the composite thing belongs to the owner of the principal thing, provided he pays to the other person a compensation based on the value of the thing which belonged to such other person.

If there is no possible distinction of principal and appurtenance, the different owners become joint-owners of the composite thing in proportion to the respective value of the separate things at the time of union. [18]

G.947. J.243, 244. S.726, 727.

Illustrations: — I. A and B agree to make an armchair out of teak wood belonging to A and wicker work belonging to B. When the armchair is finished both A and B claim the ownership of it. The teak wood as well as the wicker work can no more be separated without injury. As the teak wood is the principal thing the armchair belongs to A provided he pays to B the value of the wicker work.

II. — A and B who have both felled a few trees decide to use them to build a raft for fishing purposes. When the raft is made, both A and B claim the ownership of it. The logs of which the raft is made might still be severed from each other, but this would entail excessive expense and loss of all prospects of benefit for the fishing season. There is besides no distinction possible of principal and appurtenance. The raft will belong to A and B jointly, in proportion to the number of logs which each of them has supplied for its construction.

38. — If two movable things, belonging to two different persons, have been united without the consent of one of such persons, the following rules shall apply:

1.– When the union is such as the two things can no longer be severed from each other, the person without whose consent the union was done shall become the owner of the new thing so created provided that if the other person was in good faith, the owner of the new thing pays to him the value of the thing which belonged to such other person. [19]

2.– When the union is such as the two things can still be severed from each other, the person without whose consent the union was done is entitled to claim that the things be severed and that compensation be paid to him by the other person for any injury resulting therefrom.

Illustration: — If, in the case described in the first illustration under the foregoing section, A has acted without B's consent, B shall be considered as the owner of the armchair, but, if A was in good faith, i. e. if it is established that A believed that the wicker work belonging to B was his own property. B shall pay to A the value of the latter's teak wood used for the construction of the

armchair.

39. — If a material has, without the consent of its owner, been turned into a new form by a workman, it remains the property of the said owner without regard to the possibility or impossibility to turn the thing into its old form again. If the workman was in good faith, he is entitled to claim compensation for his work; if he was in bad faith, he is not entitled to such compensation, and is liable to pay to the owner compensation for injury if any.

However, when the value of the workmanship greatly exceeds the value of the material, the Court may decide that the thing becomes the property of the workman. In such case he shall be liable to pay compensation for the value of the material, and, if he was in bad faith, for injury if any. [20]

F.570, 571. J.246. S.726.

Illustrations: — I. A has sawn into planks some logs which belong to B and which the latter intended to use for erecting the framework of a shed. The planks shall be considered as B's property; but, if A was in good faith and actually believed that the logs belonging to B were his own property, B shall pay compensation to A for the work done in sawing the logs. If, on the contrary, A was in bad faith, he shall receive from B no compensation for having sawn the logs and shall in addition be liable to B for any injury suffered by the latter in consequence of A's doings; e.g. if B was a contractor and had undertaken to build the shed for C within a fixed time under a penalty clause, A shall be liable to reimburse to B the amount of the penalty clause paid by the latter to C for having not fulfilled his contract in time by A's fault.

II. — A carves a log belonging to B. The carving gives to the log a value much higher than that of the wood. The Court may decide that A shall be considered as the owner of the log, provided that A pays to B the value of such log and, if he was in bad faith, compensation for any injury suffered by B through the loss of his log, e. g. if B was compelled to buy a new log at a higher price than that of the lost log, A shall reimburse to B the difference.

CHAPTER III.

Acquisition by way of Occupation.

40. — Any person may acquire the ownership of unoccupied lands belonging to the State by complying with the rules for “Grant of Unoccupied land” provided by the Land Laws. [21]

G.927. S.658, 662.

41. — The ownership of fish or game is vested in the person on whose land such fish or game is living.

The ownership of fish or game which pass from the land of one person to the land of another person without any fraud of the latter devolves on

him.

The ownership of fish or game caught by a person or on his behalf in compliance with law, custom or agreement, devolves on such person. [17]

F.564. G.960. S.700.

42. — The ownership of a lost thing does not devolve on the finder. He is bound to inform the owner or the loser of such thing, or to deliver it within three days to a police officer or to any other competent official.

The finder is entitled to claim reimbursement of all reasonable expenses incurred by him for the detection of the loser and for the upkeep of the thing, and to avail himself thereanent of the preferential right for preservation of property described in the Book on Obligations.

If the finder has incurred damages therefrom, he can claim compensation and retain the thing until such compensation is paid to him.

Siam: Dika No. 9/123.

F. Circ. 3 August. 1825. G.965, 970. I.715, 717. S.700, 720. Civil Code, Obligations, s.324.

Illustrations for Sections 42 to 44. — I. The captain of a ship, in order to prevent her from sinking down during a storm, throws overboard a few scores of casks loaded on deck. One week later, the master of a junk finds these casks floating and picks them up. When he arrives at the next port of call, he must inform of his finding the owner of the casks or, if he cannot detect him, deliver the casks within three days of his arrival to the police or to the harbour or customs officers, or to the administrative head of the place, as the case may be. If the owner is found, he must reimburse to the master of the junk the cost of shipping of his casks from the place of discovery to the harbour. [22]

II. — By the effect of a sudden squall of wind or of an unexpected rise of the water level, A's river boat is torn from the landing stage to which it is made fast and carried away several miles down stream. It runs aground on the estate of B. B must inform A that A's boat has been found on B's estate or, if B cannot detect who is the owner of the boat, he must, within three days from that on which the boat has been found, deliver it to the police or to the administrative head of the place. If B has made advertisements in the papers to detect the owner of the boat, the latter shall reimburse to B the cost of such advertisements.

III. — A tiger attacks a herd belonging to B whilst that herd was grazing in the woods. A's ponies and buffaloes, frightened by the tiger, bolt away and are found by B on his estate situated at a distance of several miles from A's house. B must inform A that A's ponies and buffaloes have been found on B's estate or, if B cannot detect who is the owner of the animals, he must deliver them, within three days from that on which they have been found, to the police or to the administrative head of the place. If A learns of the place where his ponies and buffaloes are and takes them back, he shall have to pay to B the cost of the fodder given by B to A's animals. If the ponies and buffaloes have damaged a plantation of rice belonging to B, B is entitled to retain such animals until A has paid to him compensation for the damage caused.

43. — The ownership of a lost or stolen thing which has been found or seized by, or deposited with, a competent official of the Government devolves on the State if the owner of such thing has not claimed it by a declaration to the Public Prosecutor or the Officers of the Judicial Police

within one year from the day when the thing has been lost or stolen.

Laksana Rab Fong 11, 16. Dika No: 806/123. Laksana Chobr 76, 78. Law on Navigation Siam 61. State Railway tariff. Hackney Carriage Act 28. Town Police Law 27, 35. F.2279. G.973. J.193, 194, 240. S.722, 934.

44. — Lost thing, within the meaning of the two foregoing sections, includes everything which has been dropped into the sea, or has been washed ashore, or has by the strength of wind or of water, or otherwise by "force majeure" been withdrawn from the possession of its owner.

F.717. S.725.

45. — A treasure trove is a dug in, or otherwise hidden, valuable which is found without anybody being able to justify the ownership thereof.

The ownership of a treasure trove is vested in the State. The finder is [24] bound to deliver it to a police officer or to any other competent official whereupon he shall receive one third of its value.

Trans. Land Act 119 s. 12. Laksana Ava Luang s.107. F.716. G.984. I.714. J.241. S.723.

CHAPTER IV.

Acquisition by way of Usucapion.

46. — Acquisition of ownership by way of usucapion by the possessor is governed by the Division III dealing with Possession.

CHAPTER V.

Acquisition by way of Inheritance or by the Effect of Obligations.

47. — Acquisition of ownership by way of Inheritance or by the effect of Obligations is governed by the Law of Inheritance or by the Book on Obligations.

TITLE II.

Extent and Exercise of Ownership.

48. — The ownership of land extends above and below the surface, subject to the laws on mines and quarries.

Mining Act 120.
F.552, G.905. J.207. S.667.

Illustration: — A, the owner of a piece of land, can erect on such land buildings as high as he likes or make excavations as deep as he thinks fit (subject to the restrictions imposed by law or legal regulations). He may object to the owners of the adjoining immovables making any work above or under his land, e.g. laying electric wires or water-pipes however high or deep these wires or pipes are laid (except in such cases as are provided by law). If his land contains any such mineral products as are worked by quarry or mine, he cannot work them but under the conditions provided by the Mining Law 01 object to another person working them in accordance with the provisions of the same Law. [25]

49. — The ownership of a thing extends to:

(1) profits and interest of such thing;

(2) all natural or artificial appurtenances of such thing.

F.546, 551. J.206. Maroc. 12. S.642.

Illustration: — A is the owner of shares of a limited company; he is the owner of the dividends paid to him by the company.

A is the owner of a plantation of cocoanut-trees; he is the owner of the cocoanuts collected on his plantations.

A is the owner of a cow; he is the owner of the calf brought forth by his cow.

A is the owner of a ship; he is the owner of the money paid to him by the charterer of his ship.

A is the owner of a house; he is the owner of the doors, shutters, pipes, locks, etc. of his house.

A is the owner of a garden-land; he is the owner of the fruit-trees standing thereon. [26]

50. — The owner has the right freely to use the thing and to dispose of it as he thinks fit, subject to the restrictions imposed by law.

When using his right, he must refrain from any act which would cause to the neighbouring properties more injury or inconvenience than is customarily tolerated according to the respective nature and situation of the properties.

He must take all reasonable steps in order to prevent any structures or trees standing on his property from collapsing on the adjoining property.

F.537. G.903, 906, 908, 909. J.200, 237, 238. S.641, 684, 685.

Cf. Siam, Local Sanitary Decree 116; Sanitary Regulation 117; Additional Law 117 to the Local Administration Act 116; Transitory Land Act 119, s.12.

Illustration: — A, the owner of a piece of land in Bangkok, may cultivate it himself, or hire it to another person for cultivation, or let it lie fallow; he can fell the trees standing on that land, build a dwelling house, or a store or a workshop on it, or turn it into a pond, as he likes, provided that he complies with the provisions of law enacted in the general interest or in the interest of the adjoining owners: for instance although A is entitled to erect any building he thinks fit on his land if the land is situated in any part of the town where "attap" roofs are forbidden by the Local Government regulations, he cannot cover it except with tiles or corrugated iron; although he is entitled to make excavations, he cannot make one of such nature as the neighbouring houses collapse (S. 52); although he is entitled to turn his land to such use as he thinks the more profitable, if the land is situated in a residential quarter, he cannot build on it a factory the smoke, stench or trepidation of which renders the neighbouring residences uninhabitable. In the first case, he would be liable to the penalties provided by law and in the other cases to pay compensation to the injured owners. **[27]**

51. — The owner of an immovable cannot construct roofs or other structures which cause rain water to fall directly on adjoining immovables.

F.681. I.591. J.218. M.141.

52. — When there are heavy buildings or structures on an immovable, the owner of the adjoining immovable, when digging wells, cisterns, ditches, pools, etc. must take any necessary precautions to prevent the collapse of such buildings or structures.

If he fails to do so, the owner of the buildings or structures may require that the work be stopped at once until necessary precautions have been taken.

G.909. J.237.

53. — The owner of an immovable is always entitled to enclose it, provided that he does not prevent the exercise of servitudes.

F. 47. M. 12

Illustration: — A is the owner of a piece of land over which B has a right of way. A may close his land by a wire fence provided that such fence be disposed so that B be not prevented from exercising his right of way. **[28]**

54. — Fences, walls, hedges, ditches, or canals which serve as boundaries between two immovables are presumed to be joint-property of the owners of such immovables.

F.653. J.229, 230. M.116. S.670

[23]

Illustration: — A wall. divides two lands belonging respectively to A and B. A claims that the wall is joint-property. B denies the claim and produces a genuine receipt from the contractor who has built the wall, establishing that the work was done at his own expense. The presumption set up by this section falls to the ground. Judgment must be given in favour of B.

55. — When the common enclosure of two immovables consists of an hedge or of a ditch which is not used as a drain, each of the joint owners is entitled to cut down the hedge or to fill up the ditch up to the middle of its width, in order to build a wall or fence on the limit of his own immovable.

F.668.

56. — When a tree grows on the boundary line between two immovables it is joint-property. Each joint-owner can have it felled as he thinks fit. Its fruit and the timber belong to the joint-owners in equal shares.

F.670. G.923. M.132.

Illustration: — A tree grows on the boundary line between the pieces of land of A and B. B may fell the tree without asking for the consent of A. If he does so, he must bear the costs of the felling of the tree, and share the price of the sale of the timber with A.

[29]

57. — When branches or roots of any tree encroach upon the adjoining land its owner may give to the owner of the tree notice to cut such branches or roots within a reasonable time. If the owner of the tree does not comply with such notice the owner of the land is entitled to cut and keep the branches or roots, and to receive compensation for damages if he has incurred thereby.

F.673. G.910, 911. J.233. M.135. S.637.

58. — Any person is entitled to lead cattle in order to feed or water it over another person's land which is not enclosed, unless:

1. the owner expressly forbids it, or

2. the land is actually planted with trees, rice or other crops.

Siam Lakshana Betset 1 to 6, 8. S.699.

59. — Any person has a free access into the woods, forests and pasture land owned by another person and can collect fuel or fruits and gather wild growing vegetables, mushrooms and the like according to local custom, in so far as the local authorities have not issued special prohibition

S.699.

TITLE III.

Joint-Ownership.

60. — Joint-owners are two or more persons who share the ownership of an undivided thing.

Shares are presumed to be equal. [30]

G.742, 1008. I.674. J.250. S.646. Cf. Obligations, 155.

61. — Each of the joint-owners can set up against third persons his right of ownership as extending to the whole thing

G.1011.

Illustrations: — I. A and B are joint-owners of a piece of land. C claims a right of way over it. A is inclined to recognize the validity of C's claim and refuses to go to law. B alone can deny the validity of C's claim and be the only defendant in the action instituted by C before the Court, as if he was the only owner of the land.

II. A and B are joint-owners of a motorcycle. The motorcycle is stolen. A is absent. B alone can take all the legal steps necessary to secure the restoration of the motorcycle as if he was its only owner.

62. — Each of the joint-owners has over his share the same rights and liabilities as a single owner.

F.2021. G.1114. I.679. S.646, 800.

Illustration: — A and B are joint-owners of a ship. A may sell his share in the ship. If A is declared bankrupt, the Official Receiver can attach and sell A's share in the ship.

63. — No joint-owner can dispose of the thing without the consent of the other joint-owners.

Siam Dika No. 27, 40/117; 193, 232/118; 106, 140/119; 17, 257/120; 705/121; 87, 247/122; 46, 140, 409, 414, 473/123; 82/117.

Illustration:— A and B are joint-owners of a ship. A cannot sell the ship to C without the consent of B. If A sells the ship to C without B's consent, the sale does not affect the rights of B. The sale between A and C is voidable on account of mistake concerning its object, as c intended to buy a ship and not a share in the ownership of a ship. [31]

64. — The transfer, pledge, mortgage, or servitude created by contract or will, on a joint property by one of the joint-owners, is valid only as far as the ownership. of the thing remains in him after division.

As to real rights instituted over, or for the benefit of, the thing by the

effect of Law, the joint-owners are presumed to be joint debtors, or joint creditors, as the case may be.

Illustration:— A and B are co-heirs of their father's estate. This estate includes a drug store. A sells it to C before division. If, at the time of division, the drug store is put in A's share or is bought by A in an auction sale, the sale is valid and C can claim from A its execution. If the drug store, on the contrary, is put in B's share or is bought by D in an auction sale, the sale is void and C has no right to claim its execution from B or D.

65. — A joint-owner is entitled to use the thing as he thinks fit provided he does not change its destination or use it to the injury of the other joint-owners.

None of the joint-owners is entitled to modify the thing except with the consent of all the other joint-owners.

I.675, 677. J.249, 251. S.648,

66. — Unless there is an agreement to the contrary, the thing is managed by all the joint-owners together. Each of them is entitled to do such acts as may be required for the necessary upkeep and repair of the thing. [32]

G.744. I.678. S.647.

67. — If a servitude encumbers a servient property belonging to several joint-owners it cannot be extinguished with regard to one of them only.

F.709, 710. J.282, 284.

68. — A servitude acquired by one of the joint-owners of a dominant property benefits to the other joint-owners of such property. The fact that one of them exercises the servitude is enough to prevent it from being extinguished by non-usage with regard to all the joint-owners.

J.282, 284.

69. — The joint-owners bear all costs and expenses of management in proportion to their respective shares.

They are jointly liable towards third persons for the obligations incurred in that respect.

I.676. J.208, 253. S.649.

70. — Joint-owners may agree not to divide the thing between themselves for a period not exceeding five years: provided that if any of the joint-owners becomes seriously injured by the agreement he may apply to the Court for its cancellation.

When there is no such agreement or when such agreement has been cancelled, any of the joint-owners may at any time apply to the Court for an order to divide the thing. In such case the Court shall always order that the thing be sold by public auction and the price shall be distributed among the joint-owners in proportion to their respective shares. [33]

Siam Dika Nos. 12, 17/117; 250/118; 175, 200,203, 300/119; 275/121; 350/122; 37, 228/123; 25, 31, 34/117; 48/118; 78/120 etc.

F.815. G.749, 750. I.881, 885. J.256, 258. S.650, 651.

Illustration: — A and B, joint-owners of a running concern (printing work), have agreed on the 1st. April 2460 that they shall not divide their joint-property for five years. In October 2462, A who is engaged in several other businesses is on the verge of bankruptcy. He cannot find any money to borrow on his share in the printing works, but if he is allowed to sell it, he could with his share in the price-money meet his liabilities and avoid bankruptcy. Under such circumstances, he may ask the Court to order that the non-division agreement be cancelled and the concern be sold by public auction.

TITLE IV.

Surrender and Abandonment of immovables.

71. — A person who has been, under the Land Laws, granted an unoccupied land by the Government, may at any time surrender his grant, by complying to that effect with the provisions of the Land Laws.

Cf. Land Law 127, s.57 and 58.

72. — When it appears that a. land owner has abandoned his land for more than ten years, the Minister of Lands and Agriculture, after a formal inquiry, may apply to the Court for a declaration that the land has been abandoned and upon such declaration the Land Register shall be altered accordingly. [34]

G.928. Land Law 2459, s.4 and 5.

TITLE V.

Expropriation.

73. — Lands and any other immovable properties which are required by the Government for national use or public works shall be subject to expropriation, that is to say to a compulsory purchase according to the provisions of the present Title.

74. — When the construction of a public work is decided without the exact area or tract being finally surveyed, a decree may be issued to mark out a zone within the limits of which the public work is likely to be constructed.

Such decree shall be valid for two years or for such other period stated therein which may be deemed necessary for the completion of the final survey. It shall specify the Ministry or Department (hereafter to be referred to as the Ministry or Department in charge) which is competent for the execution of the scheme.

75. — During the period of validity of the zone decree the officials of the Ministry or Department in charge are entitled to make on the properties of any person all the operations which may be necessary for a complete survey, such as to take measurements, to put up stakes in the ground, to collect samples of stones, sand or other material, etc. provided that the owners or lawful occupants of such properties shall receive compensation for any injury resulting from such operations of survey. [35]

76. — When the final survey, or a part thereof, is completed, a special decree shall authorize expropriation and state:

1) the purpose for which such expropriation is authorized,

2) the lands and other immovables subject to expropriation and the places or districts where they are situated,

3) the Ministry or Department in charge of the expropriation.

A map or plan showing the boundaries of the land required for national use or for the construction of public works and the boundaries of each separate piece of land partly or wholly subject to expropriation shall be annexed to such decree.

77. — The decree shall be published in the Government Gazette.

78. — A certified copy of the decree with the map annexed thereto

shall be deposited:

1) at the offices of the Ministry or Department in charge;

2) at the offices of the Provinces, Townships and other local authorities in which the lands and other immovables subject to expropriation are situated; [36]

3) at the offices of the land-record in the provinces in which the lands and other immovables subject to expropriation are situated.

79. — On and after the date of the publication of the decree in the Government Gazette, the ownership of the lands and other immovables specified in the decree is vested in the Ministry or Department in charge, but such Ministry or Department shall have the right to take possession thereof only on payment or deposit of an indemnity, in the manner hereinafter provided.

On and after the same date, if any person having a right on the said lands and other immovables disposes of such right in favour of a third person, the latter can exercise the transferred right only against the indemnity.

80. — Indemnity shall be granted:

1) to the owner of a land subject to expropriation;

2) to the owner of a building existing on such land on the day when the zone decree was promulgated or erected afterwards with special authorization;

3) to the lessee of the land or building subject to expropriation, provided the lease be in writing and executed before the date of the promulgation of the zone decree, or after such date with special authorization, and be not determined on or before the day when the Ministry or Department in .charge takes possession of the land or building. But indemnity in the case of such a lease shall only include the injury actually suffered by the lessee on account of his being obliged to vacate the land or building before the time fixed in the lease; [37]

4) to the owner of any fruit trees or plantation existing on the said land on the day when the zone decree was promulgated or put up afterwards with special authorization;

5) to the owner of any removable building existing on the said land on the day when the zone decree was promulgated; but indemnity in this case shall only include the expenses of removing and re-erecting the building.

81. — When part only of a building is subject to expropriation, the owner may require that such extra part of the said building which cannot be used afterwards be also expropriated.

82. — When, in consequence of expropriation, a piece of land is to be reduced to less than one third of its original area, and such third contains less than one hundred square meters, the owner may require that the whole piece of land be expropriated, provided such third be not directly contiguous to any other piece of land belonging to the same owner.

83. — The indemnity due for the ownership of any piece of land or building shall be equivalent to the value of the land or building on the day when the zone decree or the expropriation decree if there has been no zone decree, was promulgated, according to the market price and to the special circumstances of each particular case. [38]

When part only of a piece of land or building is expropriated, a specific indemnity shall be allowed for the depreciation, if any, of the remaining part of the property.

When the owner is residing on a land or living in a building subject to expropriation, or carries thereon a lawful trade or business, indemnity shall be granted for the injury, if any, actually suffered by him on account of his being obliged to give up possession of such land or building.

84. — When the construction of the public works is such as to produce a special and immediate increase in the value of any remaining part of the property, such increase shall be deducted from the indemnity. But in no case shall such increase be considered to exceed the indemnity due so that the expropriated party be declared liable for a balance in money.

85. — No indemnity shall be allowed for the increase of value derived from:

1) any buildings, additions, plantations, improvements or leases when they have been made without special authorization granted by the Ministry or Department in charge after the date of the promulgation of the zone decree (due exception being made in case of cultivation of paddy or garden land in the ordinary course of husbandry); [39]

2) any such buildings, additions, plantations, improvements or leases which appear to have been made fraudulently before the date of the promulgation of the zone decree for the only purpose of obtaining an indemnity.

86. — Within three months from the date when the decree of expropriation has been published, and on application of the Ministry or Department in charge, a Commission shall be appointed by His Majesty's Government to consist of two members, one being an official of the Ministry or Department in charge, the other an official of either the Ministry responsible for the local administration, or the Ministry of Agriculture, as may seem fit.

The duty of such Commission shall be to inspect the lands and other immovables subject to expropriation and to try and fix amicably the amount of the indemnity.

The names of the Expropriation Commissioners and the specification of the districts in which they shall discharge their duties shall be published in the Government Gazette.

87. — The Local Authorities shall cause the substance of the decree of expropriation to be made known to the inhabitants of the districts concerned by posting a notice at their office, and by any means of publicity in in their power. The said local authorities shall further make known that any person claiming any right or interest on any land or other immovable subject to expropriation must present his claim to the Expropriation Commissioners within a period of one month from the notice. [40]

88. — The Expropriation Commissioners shall examine the claims brought before them, either verbally or in writing, in accordance with the foregoing section.

In case of any dispute as to the ownership of lands and other immovables, they shall try and settle it amicably.

Thereupon, the Expropriation Commissioners shall make a record of all the claims of ownership or otherwise for which indemnity may be due, distinguishing between claims of the persons whose rights are undisputed, and of those whose rights are disputed.

89. — The Expropriation Commissioners shall then negotiate with the persons whose rights are not disputed, and try to settle amicably the amount of the indemnity to be paid.

(1) In case an agreement is come to, the terms and conditions thereof shall be reduced into writing and signed by both parties in the presence of a witness. On payment of the

indemnity agreed upon, the Ministry or Department in charge shall have the right to take possession of the land or other immovable

(2) In case no agreement is come to, the Ministry or Department in charge shall notify in writing its final offer to the other party. Should such offer not be accepted within ten days from date of notification, each party shall have the right to appoint an arbitrator; and, in the case where such arbitrators cannot come to an agreement, the arbitrators shall either appoint an umpire or apply to the Court to have an umpire appointed by it, subject to the provisions of the Civil Procedure Code. [41]

90. — When a person who is presumed to be entitled to indemnity as owner of any land or other immovable cannot be found, the Expropriation Commissioners shall fix the amount of the indemnity as they think fit, and deposit such sum in a Law Court. On such deposit being made, the Ministry or Department in charge shall have the right to take possession of the land or other immovable.

If within six months from the date of the deposit, the owner lays claim to the property and refuses to accept the sum fixed by the Expropriation Commissioners, arbitrators shall be appointed as provided by the foregoing section.

After six months have elapsed, the owner shall have no other option than to accept the indemnity deposited as aforesaid in full satisfaction of all claims and demands.

91. — When (before payment to a party entitled to indemnity, or before the expiration of the period of six months provided in the foregoing section) any dispute arises as to the ownership of the property subject to expropriation, or as to the assignment or division of the indemnity, the Expropriation Commissioners or the Ministry or Department in charge as the case may be, shall try and settle amicably with all the parties in dispute the amount of indemnity. [42]

(1) In case an agreement is come to regarding the amount of the indemnity, the amount so agreed upon shall be deposited in a Law Court. On such deposit being made, the Ministry or Department in charge shall have the right to take possession of the property.

(2) In case no agreement is come to regarding the amount of the indemnity, the Ministry or Department in charge shall notify its final offer in writing to the parties in dispute. Should such

offer not be accepted by all the parties in dispute within ten days from date of the notification each party shall have the right to appoint an arbitrator; and, in the case where such arbitrators cannot come to an agreement the arbitrators shall either appoint an umpire or apply to the Court to have an umpire appointed by it, subject to the provisions of the Civil Procedure Code.

When the dispute arises after payment to a party entitled to indemnity or after the expiration of the period of six months provided in the foregoing section, claims can be exercised only against the persons who received the indemnity or in whose names the deposit was made. [43]

92. — In case the amount of indemnity is to be settled by arbitration, the Court shall, on application made at any time by the Ministry or Department in charge, authorize such Ministry or Department to take possession of the land or other immovable; subject to the deposit of such sum as the Court think likely sufficient to secure the payment of indemnity.

93. — If the party entitled to indemnity refuses to receive it as fixed by agreement or by arbitration, the Ministry or Department in charge shall have the right to take possession of the land or other immovable on depositing the amount of such indemnity in a Law Court.

94. — If the owner or occupant of the land or other immovable refuses to let the Ministry or Department in charge take possession thereof when it is entitled by this Title to do so, the Court shall, on application of the said Ministry or Department, issue an Order of ejectment to be enforced at once, without prejudice to any judicial proceedings which may be instituted by the owner or occupant.

DIVISION III. [44]

Possession.

TITLE I.

General Provisions.

95. — Possession of a thing is the fact of holding on his own account a thing, or otherwise exercising power or control over it, by a person called the possessor.

Possession may be exercised by the possessor either directly or through another person, hereafter referred to as his " representative", who is under an obligation to return the thing to the possessor.

In case of *property in genere* which is not identified, the person who holds such property or exercises power or control over it is always deemed to be direct possessor of such property notwithstanding the obligation, if any, under which he is, to deliver such property or its equivalent to the original possessor.

Can.2192. F.2228. G.854, 855, 868. I.685 J.180, 181. S.919, 920.

Illustrations: — A is the possessor of the waste land on which he has settled as well as of the shed he has built on it; but in the case of the waste land he is only possessor as long as he has not been granted a land certificate by the Government; in the case of the shed he is at the same time possessor and owner.

B is the possessor of the goods he has stored in a warehouse'; C the warehouseman is his representative.

B is the possessor of the goods sent by him to his country residence; the Railway concern or the Transport Co. is his representative (carrier). [45]

B is the possessor of the house which he leases to C; C, the lessee, is his representative.

D, a banker, is the possessor of all the money in his safe, whether derived from capital, interests, deposit on view, or fixed deposit by his customers; but he is only a representative as far as money in a sealed bag, or certificates of shares (not to bearer) deposited by E, a customer, are concerned (paragraph 3).

96. — Possession of a thing which cannot be the subject of a private right of ownership gives no right to the possessor.

Can.2213, 2220. I.690. F.2226.

Illustration: — Seashore is part of the public domain of the State and cannot be the subject of a private right of ownership. A settles on the seashore and encloses part of it by means of posts

and barbed wire; possession of the enclosed part gives him no right.

97. — Transfer of possession is complete by the actual or constructive delivery of the thing possessed.

J.182.

Illustrations: — A sells his buffaloes to B; transfer of possession is complete by mere delivery of the buffaloes (while transfer of ownership depends on registration).

A sells his house to B; transfer of possession is complete by delivery of the keys of the house, means by which power is exercised (while transfer of ownership depends on registration).

In both cases possession may be transferred before, after, or at the same time as, ownership. [46]

98. — A possessor is entitled to avert dispossession or any disturbance by using any means within the limits specified in the provisions concerning Lawful Defence.

G.862. S.926. Cf. Obl. (Lawful Defence) s.143.

99. — A possessor who has been unlawfully dispossessed of a thing by another person is entitled to have the thing returned to him at once, and to receive compensation for injury, unless such other person affords conclusive evidence of a better right over the thing which would entitle him to claim it back from the possessor.

G.861, 985, 986. I.695, 696. J.200. S.927.

Illustration:-A is the possessor of a piece of land. B pretending to be the owner of such piece of land forcibly takes possession of it. A can claim immediate return of the piece of land and compensation for injury.

However if B can show without delay, for instance by producing his land certificate, that he is the owner of the piece of land, A's claim shall be dismissed.

100. — A possessor who is unlawfully disturbed in his possession by another person is entitled to have the disturbance stopped and to receive compensation for injury.

G.862, 1004. I.694, 698, 699. J.198, 199. S.928.

101. — The special rights of action which, under the two foregoing Sections, the possessor derives from the mere fact of his possession are extinguished by prescription after one year from the act of dispossession or disturbance. [47]

G.864. S.694, 695. J.201. S.929.

102. — When possession is exercised through a representative the rights described in the foregoing Sections can be exercised by the representative as well as by the possessor.

In the case of an action entered by the representative, the latter is entitled to summon the possessor to appear in such action to be a joint-plaintiff with him, or the possessor is entitled to intervene in the action.

In any case of dispossession or disturbance, the representative shall forth with inform the possessor of the occurrence, failing which he is liable to the possessor for any injury resulting from his omission.

Cf. Oblig. 508, 509.

103. — Possessory rights are extinguished when the possessor voluntarily or by effect of the law gives up the thing or otherwise discontinues directly or indirectly to exercise the power or control over it.

G.856, 865, 866.

Illustration: — A is the possessor of a golden watch:

1° A sells and delivers it to B. A's possessory rights are extinguished.

2° A pledges and delivers it to C. The latter holds the watch on A's account, A's possessory rights are not extinguished.

3° The watch is attached and sold by auction, against A's will, by order of the Court, for the benefit of his creditors. A's possessory rights are extinguished. [48]

See also illustrations under Section 113.

104. — The possessor of a thing *in genere* which is not identified is the owner of it.

This does not dispense the possessor from fulfilling any personal obligation (to deliver such thing or its equivalent, or to make compensation) which may have not yet been extinguished by prescription or otherwise.

Illustrations: — I. — A and B are the possessors of two cocoanut plantations. When the time for gathering the nuts has come B's workmen inadvertently encroach on the limits and gather 1,000 nuts from A's trees. B thus becomes the possessor of 1,000 nuts which belonged to A. But as it is impossible to identify those nuts B shall be deemed the owner of all the nuts gathered by his workmen; he shall not be dispensed thereby of the obligation to deliver to A 1,000 nuts or to pay compensation for them. But this is only a personal obligation and A has no. action for recovery of the nuts.

II. — Under Section 95 S 3 the person who holds a property in genere which is not identified or exercises power or control over it is deemed to be the direct possessor of such property. By the effect of the present section he is also deemed the owner of it. For instance, A has delivered to B, a rice miller, 100 piculs of paddy to be milled on A's account. B acts as a hirer of work. If the property could be identified B would be only a representative of A; but as the property cannot be identified among the 2 or 3,000 picules of paddy kept in B's granary, B is deemed the direct possessor of A's paddy, and by the effect of the present Section B's possession is equivalent to ownership. Now suppose that B does not perform his obligation to mill the paddy; A has an action for the return of 100 picules of paddy, or for delivery of their equivalent in milled rice, or for compensation, but he cannot pretend to identify his 100 picules of paddy among the bulk of 2 or 3,000 picules in the possession of B; A has therefore no action for recovery. [49]

105. — The possessor of a specific or identified thing is presumed to be the owner of it.

F.2230. G.1006. J.186 §1.

Illustration: — If a discussion arises between two persons as to which of them is the owner of a thing, the one who possesses such thing shall be in the position of a defendant; the other one has to afford evidence of his right of ownership against the possessor, failing which the possessor will be left in possession on the ground of the presumption of ownership attached to possession. For instance, A is the possessor of a golden watch; B contends that he is the owner of that watch. A is not bound to give evidence or explanation of how and when he became possessor of the watch; he must be left in possession until B has first brought conclusive evidence of his right of ownership. Supposing that B was able to produce such evidence, for instance by quoting the number written inside the watch and proving that he bought it from such jeweller at such time, the presumption of ownership in favour of A falls to the ground.

106. — When possession is exercised through a representative, the presumption of ownership is in favour of the possessor. [50]

It passes in favour of the representative when he becomes possessor, that is to say only when he begins to possess on his own account under a new title, or by notifying the original possessor of his intention to do so, or because his personal obligation to return the thing is extinguished by prescription.

Can.2195. F.2231, 2238. I.687 (2), 2118. J.185.

Illustrations: — A has deposited a silver bowl with B. A remains the presumed owner of the bowl.

I. — A bequeaths the bowl to B and dies. B becomes possessor of the bowl under a new title, as legatee, and is henceforth the presumed owner.

II. — A being in debt towards B, B notifies A that he will keep the bowl in settlement of the debt. Bis henceforth possessor and presumed owner of the bowl.

III. — A forgetting all about his bowl remains ten years without asking B to return it. B's obligation to return the deposit is extinguished by prescription. B begins henceforth to possess the bowl on his own account and to be presumed owner of it.

107. — As regards unoccupied lands belonging to the public domain of the State, mere possession without grant confers no right of ownership. The State is not bound to grant the land to the possessor but it may dispose of it at its own discretion, even when a Court has given a judgment in a case of dispossession or disturbance in favour of the possessor who has exercised the rights of action in accordance with the foregoing sections. [51]

S.937.

Illustration. — A has settled on a piece of waste land and has received from the Land Officer a bai-yieb-yam for that piece of land. B unlawfully takes possession of part of that piece of land. A applies to the Court, under section 99, and judgment is given in his favour against B.

After some time it becomes apparent that the piece of land is larger than A is able to cultivate. In consequence a land certificate is granted to A for part only of the piece of land, excluding the very part of which B had unlawfully taken possession. Nothing in the judgment prevents the State from granting that part to I, or from deciding that such part shall henceforth be considered as land reserved for the use of the State.

As such waste land cannot be acquired by way of usucapion, the fact that A has possessed it during ten years or more would likewise not prevent the State from reducing the area of that piece when a land certificate shall be granted or even from refusing altogether to grant a land certificate to A.

108. — As regards immovables, possession can never be set up against the registered owner except by a hostile possessor who, having completed usucapion, has the right to claim registration as owner.

The same rule applies to the following movables: ships or vessels having displacement of and over six tons, steam-launches or motor-boats having displacement of and over five tons, floating-houses and beasts of burden. [52]

Illustration: — A is the registered owner of a house in Bangkok. A goes abroad and ceases to look after his house in any way as from the 1st. April 2462. B finding the house abandoned takes possession of it on the 15th. of August 2463.

If A comes back before the 15th. of August 2473 and claims the house, B derives from his possession no presumption of ownership against A, the registered owner.

If A comes back and claims the house on the 15th. • of August 2473, B can set up against A the presumption of ownership derived from possession (although B has not yet had registered his right of ownership, acquired by way of usucapion).

TITLE II.

Usucapion.

109. — Usucapion is the way by which a possessor acquires the right of ownership by long and uninterrupted use.

J.162.

110. — A person who openly and without interruption possesses a specific or identified thing belonging to another person for a period of

(1) ten years in case of an immovable,

(2) seven years in case of ships or vessels having displacement of and over six tons, steam launches or motor-boats having displacement of and over five tons, floating houses and beasts of burden, [53]

(3) five years in case of other movables, becomes the owner of it.

J.162.

111. — In case of usucapion, the calculation of periods of time is governed, *mutatis mutandis*, by the provisions of the Code on Obligations concerning Prescription.

Illustration: — A who was born on the 1st of June 2452 has on the 3rd of July 2462 inherited from his father a house in Bangkok; but he was not aware of it and never looked after that house. A has no lawful representative. Supposing that B had taken possession of that same house on the 15th of August 2462, usucapion would, as against any person, be completed in B's favour on the 15th of August 2472. But as against A usucapion will not be completed in favour of B until the 1st of June 2473, that is to say, one year after A has acquired capacity (Obligations 370.)

If A enters an action in Court against B on the 1st of April 2473, and thereby interrupts usucapion such usucapion shall likewise not be completed in favour of B until the new period of usucapion to run from the interruption, has been completed against A. (Obligations 373, 381.)

112. — As regards things obtained through an offence, usucapion is not completed in favour of the offender or of the transferee in bad faith until the penal action is extinguished by prescription. [54]

J.162. Cf. Penal Code, Sect. 96.

Illustration: — A has, through robbery committed by night, wrongfully taken possession of a golden watch. The penal action is extinguished by prescription after fifteen years only. Usucapion, which in the ordinary course of things, would be completed after 5 years, shall not be completed in favour of A or of A's transferee in bad faith until fifteen years have elapsed from the offence, or from the last act interrupting the prescription of the penal action.

113. — Usucapion is interrupted when possessory rights are extinguished. It is not deemed to be interrupted:

(1) when possession is exercised through a representative,

(2) when the possessor having been unvoluntarily [involuntarily] and temporarily dispossessed of the thing recovers possession of it.

Can.2196. F.2232, 2244. G.856 (2), 940. J.164, S.921.

Illustrations: — I. A was the possessor of a golden watch. A sells and delivers it to B, or it is attached and sold by auction to C. A's possession is extinguished and usucapion does no more run in his favour. If some time afterwards A finds the same watch or otherwise takes possession of it, a fresh period of usucapion begins to run in his favour.

II. A delivered his watch to B as a pledge. A's possession is not extinguished, as explained under Section 103; usucapion is therefore not interrupted. [55]

III. A lost his golden watch but it was found by the Police and returned to A two months afterwards. Usucapion is deemed not to have been interrupted, because possession was not extinguished within the meaning of Section 103.

See also illustrations under Section 103.

114. — When the first and last terms of possession are proved, the possession is presumed to have continued during the interval.

Can.2199. F.2234. G.938. I.691, 692. J.186 §2.

Illustration: — A is the possessor of a bicycle. A can give conclusive evidence that he was in possession of it five years ago on such day, say on the 20th. of November 2458. A is presumed to have been in possession of the bicycle without interruption from that date. If B, a claimant, pretends that he has bought that same bicycle from X on the 1st. of January 2459 and was for some time in possession of it, B has to prove those facts, failing which the presumption of section 114 will hold good and A will be able to set up usucapion against B's claim.

115. — The transferee of a possessor can at his option either assert his own possession or his possession together with that of the transferor.

In the latter case the defects which existed in the possession of the transferor can be set up against the transferee. [56]

Can.2200. F. 2235. G.943, 944. J.187.

Illustration: — A was for three years the possessor of a silver bowl. He transfers it to B. After two years more C claims back the silver bowl which he had lost originally. B can, at his own option, set up his own possession during two years, or his possession together with that of A (totalling five years). In the latter case B can claim that usucapion is completed in his favour. However if A had not possessed the silver bowl on his own account, or if he possessed it clandestinely, the defect in the possession of A can be set up against B so that usucapion shall not be completed in favour of B.

TITLE III.

Recovery of Possession.

116. — An action for recovery of a specific or identified thing from a possesor who has no title of acquisition or has acquired the thing from a person who has no right to dispose of it, can be maintained by the owner.

The action for recovery can be maintained against the representative as well as against the possessor.

F.2279. I. 708. J.193. S.932.

Illustration: — I. Possessor without title. A is the owner of a piece of land but does not look after it from the 15th. September 2457. B takes possession of it on the 20th. May 2461. B is without title. A may exercise against B the right of action for recovery of his piece of land until the 20th. May 2471 when B has become owner of it by way of usucapion.

[57]

II. — Possession transferred by a person who had no title to dispose of the thing. A has lost his golden watch on the 3rd of April 2458. B found it and sold it to c on the 30th of May 2458. C has acquired the thing from a person who had no title to dispose of it. A may exercise against the right of action for recovery until the 30th of May 2463 when C has acquired the ownership of the watch by way of usucapion.

117. — When, on account of the action for recovery, a possessor or representative is deprived of the thing he has only a right to claim compensation from his transferor.

F.2279. I.708.

Illustrations: — I. — A is the owner of a golden watch which is stolen from him by B. B has no title of acquisition. B sells the watch to C. A may exercise against C the right of action for recovery, as long as C has not completed usucapion. When, on account of such action, C is compelled to return the watch to A, C has only the right to claim compensation from B.

II. — In the same occasion, B pledges the golden watch to C. B has been possessor, as a matter of fact, and C is his representative. A may exercise against C the right of action for recovery in the same conditions as herein before and C, if compelled to return the watch to A, has only a right to claim compensation from B for amount lent to B.

III. — B, who is a thief and has stolen the golden watch, has no transferor at all. Of course, when A, by exercising the right of action for recovery against B, compels B to return to him the watch which B possesses as a matter of fact, B can claim compensation from nobody.

118. — If a possessor or representative has acquired a thing lost or stolen, in good faith, by purchase at an auction, or in open market, or from a trader dealing in similar things, the owner can only recover it on reimbursement of the purchase price.

F.2280. G.935. I.709. J.194. S.934.

Illustration: — A has bought a golden watch from a watchmaker. The watch was stolen from

B by a thief who had sold it to this watchmaker. B may exercise against A the right of action for recovery, but he must reimburse to him the price paid to the watchmaker.

119. — Money and instruments to bearer even lost or stolen cannot be recovered from a possessor who has acquired them in good faith.

S.935.

120. — A possessor is in good faith when he possesses by virtue of a title the defects of which he does not know. He remains in good faith until the time when conclusive evidence of the defects has been produced against his title. He then ceases to be in good faith from that moment only.

F.550. I 701. J.189 §2.

Illustrations: — A has bought a diamond necklace from B, not knowing that B had received it as pledge from C. A is in good faith. But he ceases to be in good faith when C has produced to him conclusive evidence of his right of ownership (for instance a "receipt as pledge" from B together with photographs or other documents for identifying the necklace). [59]

According to Section 19 of the Book on Obligations, A is presumed to have been in good faith. If C contends that A was in bad faith, C must bring evidence of such bad faith. If C contends that A ceased to be in good faith from a certain time because C has produced to A conclusive evidence of his (C's) ownership, C should also prove how and when he did produce such conclusive evidence.

121. — A possessor is in bad faith when he possesses forcibly or clandestinely.

But the possessor is not in bad faith when he has taken possession forcibly in compliance with the provisions governing self-help or lawful defence.

F.2233, 2229. I.689. G.858.

Illustrations: — I. — A has stolen a golden watch from B and sold it to C, C, knowing that this watch was stolen, keeps it hidden. Both A and C are possessors in bad faith.

II. — A, who lives in Bangkok, is creditor of B who shall deliver to him a horse for the race-course of next Sunday. On Saturday, A hears that B is sending this horse to Singapore by a ship which will sail in a few hours. A, exercising the right of self-help which is granted to him by the Book on Obligations (Section 127) takes possession of the horse, even contrary to the protests of B's lads which were bringing the horse into the ship. A's possession is not forcible, and he is not in bad faith. [60]

122. — The possessor in good faith who is deprived from possession of a thing is not responsible towards the owner for loss or damage to such thing. But if he has received a compensation paid to him for such loss or damage, he is bound to return such part of compensation as governed by the provisions of undue enrichment.

If the possessor was in bad faith, he is fully responsible towards the owner for the loss or damage even caused by *force majeure*.

J.191. S.938 §2. Cf. Obligations (Undue Enrichment) s.110, 112.

Illustration: — A was the possessor in good faith of a house in Bangkok. His is evicted by B who was the real owner of such house. If the house has been damaged by the floods or destroyed by fire during the time of A's possession, A is not responsible for it. However if A had insured the house against fire and has received an indemnity for the destruction of such house he is bound to pay to B such part of the indemnity as he has not yet spent.

If A was in bad faith he is fully responsible towards B for the loss or damage caused to the house by floods or fire.

123. — A possessor in good faith acquires the profits and interests of the thing possessed. In case of his being deprived of possession, he is bound to return such profits and interests calculated from the moment he ceases to be in good faith only. [61]

If the possessor was in bad faith, he is bound to return the profits and interests of the thing possessed, and to pay compensation for those which have not been collected.

Can.431. F.519. G.955, 993. I.703. J.189, 190. S.938, 940. Cf. Obligations s.114, 115.

Illustration: — A was the possessor of a plantation of coco-nut trees since the 1st. of April 2458. During the year 2458 he failed to pluck off the coco-nuts. Afterwards he secured the coco-nuts every year. On the 30th. of June 2461 B produces to A conclusive evidence of his right of ownership but A remains in possession until the 3rd. of May 2462.

If A was in good faith he is not responsible towards B for the missed crops of the year 2458 nor for the coconuts collected until the 30th. of June 2461. From that time, as I could no more pretend that he was in good faith, he must return to B the coco-nuts collected until the 3rd. of May 2462 or pay their value.

If A was originally in bad faith he would be responsible towards B for the value of the coco-nuts collected during the years 2459 to 2462 and also for the value of the coco-nuts which he failed to collect during the year 2458.

124. — A possessor who has incurred expenses on account of the thing from the possession of which he is deprived is entitled to reimbursement according to the provisions concerning restitution of undue enrichment. [62]

Can.411. S.939, 940.

125. — When the owner had transferred the thing to a person in execution of a contract which is afterwards cancelled as void, voidable or for any other reason, such cancellation gives only to the transferor a personal action against the transferee for return of the thing or compensation, but it does not give him the real action for recovery against any present possessor of the thing in good faith.

Cf. Obligations s.112, 113.

Illustration. — A, being a minor, aged 18 years, and without a lawful representative, was the owner of a house in Bangkok the estimated value of which was 20,000 baht. A, wanting money quickly, for his amusement, sells the house to B for 15,000 baht. The contract is registered and the house delivered to B. But three years afterwards, when he has become of full age, A claims that the contract of sale is voidable because he had, at the time, no capacity to conclude it and the contract actually caused injury to him (Civil Code, Capacity of Persons s. 77). The contract is cancelled on that ground. A has a personal action against B for the return of the house or for compensation; he has no real action for recovery either against B, or against C, D, X, transferee or subtransferees of B. That is to say:

If B is still the owner of the house and is solvent A will get the house back; **[63]**

If B has transferred the house to C and is solvent, A cannot get the house back but will receive full compensation;

If, in any case, B is bankrupt A will get only a part compensation pro rata in competition with the other creditors of B.

DIVISION IV.

Servitudes.

TITLE I.

General Provisions.

126. — A servitude is an encumbrance on an immovable created for the benefit of another immovable or of particular persons.

The owner of an immovable subject to the servitude is bound to suffer some specific acts to be done on his property for the benefit of the other immovable or persons, or to refrain from exercising certain rights inherent to his ownership.

F.637, 638. G.1018, 1019. J.280. M.108. S.730. Tunis 1. 1st. July 1885, s.153.

Illustration: — I. — A agrees with B that a canal will be dug on A's land to let the excess of water of an artesian well, bored by B on his land, flow off into the Klong bordering A's land. This is a servitude created for an indefinite period of time and binding A to allow B to do a specified act on A's land to the benefit of B's land. [64]

II. — A agrees with B that no building will be erected on A's land for fifty years in order not to conceal the sight of the landscape from the windows of the house to be built by B on his own land. This a servitude created for a limited period of time and binding A to refrain from doing a specified act on his own land to the benefit of B's land.

III. — A is the owner of a house which is let and the annual rent of which is 3000 baht. A may create for the benefit of B a servitude upon the annual profit of his house: so that B be paid an annual sum of 1200 baht from the rent. This is a servitude created for the benefit of a particular person.

127. — When a servitude established by law conflicts with a servitude created by contract or will, the former overrules the latter.

F.639, 686. J.280. M.109. T.154.

Illustration. — A has agreed with B to give to B a conventional right to dig a canal on A's land. C, the owner of another land adjoining A's property, claims in accordance with section 142 a right of way of A's land. Neither A nor B can object to the right of way although the said right of way will cut the line of the canal which A has allowed B to build on A's land.

128. — The owner of the dominant property is bound to exercise the servitude strictly according to the law or to the terms of the contract, and in the least injurious way to the servient property. [65]

F.702. G.1020. M.152. S.737.

Illustrations: — I. A has dug a canal on B's land for the purpose of irrigating A's land. Later on. A wants to enlarge the canal so that he can use it as a water way; B objects thereto; A enters an action against B. A's claim must be dismissed because he cannot be allowed (under the agreement entered into) to dig on B's land a canal wider than necessary for irrigation purposes. He can be allowed to do so only by virtue of a new agreement entered into with B to that effect.

II. A can be required by B to dig the irrigation canal on such part of B's land as is the most convenient to B, even though A be obliged thereby to make the canal larger and to incur higher expenses to dig it, e.g. B can require that A dig the canal, not across the ornamental garden in front of B's house, but along the edge of such garden, although the length of the canal be doubled thereby.

III. A, instead of letting the water run slowly through the canal according to the ebb and flow of the tide, builds a sluice and works it in such a way that he provokes slides on the sides of the canal and is about to cause the fall of several big fruit trees standing on B's land. B may require from A that he works the sluice in such other way as will not cause injury to B's land.

129. — The owner of the dominant property is entitled to make at his own expense on the servient property any work that may be necessary for the upkeep and use of the servitude.

He is bound to keep such work in a state of good repair inasmuch as the interest of the servient property may dictate.

The owner of the servient property is entitled to compensation if he is injured by an alteration in the condition of his immovable caused by such work or by its not being repaired.

He may use such work provided he does not thereby hinder the exercise of the servitude and he shares in the costs of upkeep and repair in proportion to the benefit which he derives therefrom.

F.697, 698. S.737, 741. G.1021, 1020 (2°). J.288 (for the last paragraph.) M.147. S.737. 741.

Illustration: — §1. — A has been allowed to lay electric wires on B's land. He is entitled, not only to lay the wires, but also to do on B's land, at his own expense, all such work as may be necessary to keep the electric line in good order, e.g. to change the posts, isolators, wires, etc. when they are worn out.

§ 2. — On the other hand, he is bound to do, on B's land at his own expense, all such work as may be required by the interest of B; e.g. if a post is in such a bad condition as it threatens to collapse and damage B's house or garden, or to cause a fire or any other accident, he must change it.

§ 3. — If the works made by A have caused an alteration in B's land, e.g. if several posts have been erected across B's land and some trees felled on the same land to allow the laying of the wires, or if the workmen repairing the line have caused a damage to B's land, e.g. if they have spoilt flowers, plants or crops on B's land, B is entitled to compensation. [67]

If A has failed to do the works necessary in the interest of B's land and some damage has been caused to B's property thereby, e.g. if a post has fallen and damaged the roof of B's house, B is also entitled to compensation from A.

§ 4. — B can take advantage of the laying of an electric line on his land to have an electric accommodation made for himself, provided that the necessity to supply electric power to two places does not render useless the installation originally made by A and does not entail a new

installation, and provided further that B shares in the expenses of upkeep and repair of the line. For instance, if he takes advantage of the whole installation made by A on his land and consumes as much electricity as A, he shall have to stand half the aforesaid expenses; if he takes advantage of part only of the line laid by A, he shall have to pay only a third, or a quarter, or a fifth of the said expenses, according to circumstances.

130. — In any case where the exercise of a servitude is subject to payment of a compensation, the owner of the servient property is not bound to suffer such exercise until proper security for the payment of compensation has been given by the owner of the dominant property.

S.691.

131. — The owner of the servient property cannot alter the servitude or make its exercise more difficult. However if for any reason the servitude becomes more injurious, or hinders or prevents necessary repairs to his immovable, he can substitute a place not less convenient for the exercise of the servitude. [68]

F.701. G.1023. M.151(3). S.737, 742.

Illustration: — A servitude for watering cattle has been established by the Government on a pond situated on A's land to the benefit of the estates situated within a radius of ten sen from the pond and the owners of which are B, C and D. The latter use to lead their cattle to the pond by a gate of the enclosure of A's estate, through which the way from their places to the pond is the shortest. A cannot compel B, C and D to lead their cattle to another pond also situated on his land, nor can he compel them to use another gate of the enclosure and to make a much longer way to come to the pond. However, if the gate used by B, C and D is on such part of A's land as is the most convenient for the erection of a house and A would be injured if compelled to build a house elsewhere on account of B, C and D's right of way. A can require them to use another gate. But, if the use of such other gate would entail B, C and D making an exceedingly long way. A could not require them not to use the original gate.

132. — Servitude is transferred together with the ownership of the immovable as its appurtenance.

J.281, 286. S.781.

Illustration: — The quantity of water running in a stream being not sufficient to meet the needs of the owners of all the immovables situated along this stream, the said owners have gone to law and a judgment has been given by the Court specifying the quantity of water to which each owner is entitled. A, the owner of one of the immovables situated along the stream, cannot dispose of his right to the quantity of water assigned to him by the judgment (although he does not want it any more, because, for instance, he has given up the cultivation of his land) in favour of B, the owner of an immovable adjoining that of A, but not situated along the stream. But if A sells his land to B, the sale will include A's right to the quantity of water specified by the judgment. [69]

133. — If the servient property be divided, the servitude as a rule continues upon all parts thereof.

If however the servitude does not rest upon any particular part and

according to the circumstances cannot so rest, each owner of a portion not encumbered therewith may demand that it be extinguished as to his part.

F.700. J.282. S.744. G.1026.

Illustrations: — I. — A, the owner of a land, divides that land into two parts which he sells respectively to B and C. That land was subject to a servitude according to which A could not prevent or modify the natural off-flow of rain or flood water to the injury of an adjoining land owned by D. B and C, becoming the owners of the two parts both adjoining D's land, are both subject to the same obligation as A regarding the off-flow of rain or flood water from D's land.

II. — If A's land was subject to a right of way to the benefit of D's land and B can produce conclusive evidence that the way used by D was always on the part sold to C, he may ask for an acknowledgement by D or apply for an order of the Court declaring that his part is not subject to any right of way to the benefit of D's land.

[70]

134. — If the dominant property be divided, the servitude as a rule continues in favour of all the parts thereof.

If the use of the servitude is limited to one part according to the circumstances, the owner of the servient property can demand that it be extinguished in respect to the other parts.

G.1025. J.282. S.743.

Illustration: — A's land, being situated along a watercourse, is subject to the servitude provided by Section 140 allowing B, the owner of the land situated on the opposite bank of the watercourse, to rest a dam on 4's land. B divides his land into two parts, one of which is along the watercourse and the other further inland. He sells the former part to C and the latter to D. A's land remains subject to the aforesaid servitude as regards the part sold to C, but it can be freed from the servitude as regards the part sold to D because D can no longer avail himself of Section 140.

TITLE II.

[71]

Real servitudes established by Law.

135. — Servitudes established by law can be exercised at any time in the conditions provided by law and without being registered.

The conditions provided by law may be altered by a contract, but such contract must be registered on the Land Register.

G.924. M.109, 2°. S.680.

Illustration: — A's land is subject to a right of way to the benefit of B's land. A, having left his land waste for many years, B uses a way which he has built across the middle of A's land. Later on A, who wishes to enclose his land and erect a house on it, agrees with B that B will build a new way along one of the boundaries of A's land and give up the use of the original way. This agreement can be set up against a third person, e.g. the buyer of B's land, only if it has been registered in the Land Register.

136. — The manner of exercising a servitude established by law shall, in case of dispute thereanent, be inferred from the origin and nature of the servitude.

Illustration: — An electric line has been erected on A's land to the benefit of B's land. B's servants use to pass over A's land to maintain and repair the line. B avails himself of such fact to pretend that he has a right of way on A's land. If it appears from the enquiry made by the Court that B's servants have never been allowed to pass over A's land except for the purpose of maintaining and repairing the line, B's claim must be dismissed.

137. — The Government can institute for the benefit of the neighbouring community a right to use for domestic or agricultural purposes the water of a well or pond upon private property; provided that the owner be never deprived of such quantity of water as will satisfy his reasonable requirements.

[72]

In such case, the owner is entitled to compensation for the institution and exercise of the servitude. This compensation shall be fixed in the same way as in the case of expropriation.

S.709. F.642.

138. — The owner of an immovable through which a water-course runs is entitled to alter the course of such water as he thinks fit, but he is bound to restore the water to its natural course at the place of exit.

F.644, laws 29 April 1845, 8 April 1898. I.543, 613. J.219, 222.

139. — The owner of an immovable through or along which a water-

course runs is entitled to use the water for his requirements but he is bound not to draw so much of it that the owners of other immovables along the same water-course cease to get the quantity of water which is necessary for their normal requirements. [58]

140. — The owner of an immovable along which a water-course runs is entitled to build a dam across such water-course and to rest it on the opposite bank provided that no serious injury to other immovables be likely to result therefrom, and he pays compensation for minor injuries if any. [73]

Siam, Laksana Betset 18 to 21. I. 613. J. 222.

Illustration: — A, the owner of a piece of land situated along a watercourse, wishes to build a dam across that watercourse for the purpose of better irrigating his land. If it appears that the building of the dam and the consequent rise of the water level will cause the flooding of the whole or of the greatest part of another bordering land situated upstream, A cannot build the dam. If it appears on the contrary that the rise of the water level will cause the flooding of only a very little portion of another bordering land situated upstream, A may build the dam, but he must pay to the owner of the land upstream proper compensation for the loss of the flooded portion of that land.

141. — In any case the Government is entitled to restrict the rights mentioned in the three foregoing Sections as far as water-ways of the public domain are concerned.

142. — When an immovable has no access to any public road or has an access which is obviously inadequate to the reasonable requirements of its owner, the latter has a right of passage on the adjoining immovables to the nearest public way.

This right of passage can be claimed only against the owner of the adjoining land which will be the least injured thereby.

The owner who exercises a right of passage is bound to pay compensation for any injury resulting therefrom. [74]

The owner of an immovable is not precluded from claiming access to a public road by the fact that his immovable already has an access to a water-way.

F.682 to 684. G.917. I.593. J.210 to 213. M.142, 143. S.694.

143. — The owner of an immovable is bound to allow, under reasonable conditions, the owner of an adjoining immovable to use his land (exclusive of dwelling places) for the purpose of such repairs to fences, walls or buildings on or near the boundary as could not be conveniently executed otherwise. But he is entitled to compensation for any injury caused thereby.

I.591. J.209. S.695. Cf. Penal Code (trespass) s. 327 to

331.

Illustration: — A is the owner of a house which has been built in such a way that one of its walls stands on the boundary line and cannot be repaired from inside the compound of A. The part of the land situated along the wall on the other side of the boundary line and belonging to B is a garden. A may require from B to allow workmen to use his garden for repairing the wall of A's house (erection of scaffoldings, storing of bricks, cement, etc.), but B may declare the use of his garden subject to reasonable conditions such as: specification of the places where materials will be stored, prohibition of night work, delimitation of the part of the garden to be used by the workmen, etc. If B suffers any injury, e.g. if the carelessness of A's workmen or the storing of materials damages the garden, he is entitled to receive proper compensation from A.

144. — The owner of an immovable is bound to allow the laying through his property of water pipes, drainage pipes, electric wires or other similar fixtures for the use of the adjoining immovable when they cannot be laid without the use of the land or at unreasonable costs. [75]

S.691.

145. — Servitudes instituted by law other than those specified in this Title are described in the special Laws relating thereto.

TITLE III.

Real servitudes created by contracts or wills.

146. — Servitudes created by contract or will, or any alterations of them, are void unless made in writing and registered in the Land Register.

S.731.

147. — When two servitudes created by contract or will conflict with each other, the one registered before overrules the other.

G.1024.

Illustration: — A enters into an agreement with B, on the 1st of April 2458, giving B the right to dig an irrigation canal on A's land. On the 1st of May, he enters into another agreement with C, giving C a right of way on A's land across the line along which the canal is to be dug. If B has entered the former agreement in the Land Register before C enters the latter, C cannot object to B digging a canal across the line of the way to be made by C. But, if B was negligent and let C register his agreement first, he may dig his canal only on condition that it will not interfere with C's right of way; he may therefore be compelled to give up the digging of the canal or to do such works as may be required by the existence of a right of way across the line of the canal, e.g. he may be compelled to build and maintain at his own expense a bridge allowing C to cross the canal.

[76]

148. — If the necessities of the dominant property alter, an increased encumbrance cannot be imposed upon the servient property.

B. 739.

Illustration: — A has entered into an agreement with B, giving B the right to lay on A's land the pipes necessary to bring to B's house the water required for B's domestic needs. Later on B erects on his land a factory for the working of which a very large quantity of water is needed. He cannot avail himself of the agreement entered into with A to lay on A's land the pipes necessary to meet his present industrial needs. He must enter into a new agreement with A to that effect, and, if A refuses to do so, B must lay his pipes elsewhere.

149. — A servitude created by contract or will is extinguished:

(1) by the extinction of the contract;

(2) when the exercise of the servitude has be come impossible owing to *force majeure*; [77]

(3) when the owner of the servient property gives conclusive evidence that the servitude has become practically useless;

(4) by the non-usage of the servitude for ten years.

F.703, 705, 706. S.734, 735, 736. M.153.

Illustrations: — (2) A servitude has been created on A's land, allowing B, C and D, the respective owners of three adjoining lands, to use a well situated on A's land. The well dries up for ever. The servitude is extinguished.

(3) A servitude has been created on A's land, situated along a watercourse, allowing B, the owner of an estate situated further inland, to dig a canal on A's land to bring the water of the stream to B's land. In consequence of an extraordinary rising of the stream, the course of the latter is altered and the canal dug on A's land becomes useless. The servitude is extinguished.

150. — The extinction of a servitude created by contract or will cannot be set up against third persons unless mention of the extinction has been entered in the Land Register.

S.731, 734.

Illustration: — A, the owner of a dominant property, enjoys a right of way upon the adjoining land of B. But A does not use it from 2453 to 2465, and his right has been extinguished by non-usage. B is entitled to have mention of the extinction entered in the Land Register. Even if B is negligent and does not request this mention, A can no more claim the exercise of the right of way against him. [78]

But suppose A, on the 1st. November 2465, sells his property to C. No mention of the extinction of the servitude has been entered in the Land Register. When C purchases the property of A, he is entitled to believe, on examination of the Land Register, that this property enjoys a right of way upon the adjoining immovable. B, having been negligent, cannot oppose against C the extinction of the servitude.

151. — Servitudes in the nature of right of way or of right of water may be acquired by way of usucapion: that is to say when a servitude has been actually exercised during ten years openly and without interruption, the owner or lawful occupant of the dominant property is entitled to have the servitude registered for the benefit of his property.

F.690, 691. G.937. J.283, 289, 291, 293.

Illustration: — A has, during ten years, openly and without interruption passed with his carts and his cattle over a waste land belonging to B, because it is much more convenient to him to use that way than any other one to reach the next public road. If B denies to A the right to cross his land any longer, A may claim that he has acquired a right of way through usucapion to the benefit of his land over that of B. If A has hired his land to C and C had passed over B's land as aforesaid, A may also claim the acquisition of the right of way through usucapion. If the land over which A or C used to pass belongs, not to B, a private person, but to the public domain of the State, A cannot claim that he has acquired a right of way by usucapion over that land.

152. — A servitude acquired by usucapion is valid as between the owners of the dominant and servient properties even without registration. But it will not be valid on any transfer unless it be registered before the transfer. [79]

Illustration: — A, owner of a dominant land, has acquired by usucapion a right of way upon the adjoining land of B. B cannot object to the exercise of the servitude. But suppose B sells his

land to C, the servitude having not been registered. C, who was not aware of the existence of a servitude on the land he has purchased, though he has examined the Land Register, can object to to the exercise of the servitude by A. A has been negligent when having the servitude not registered, and he loses his right.

TITLE IV.

Other servitudes.

CHAPTER I.

Habitation.

153. — Habitation is the right granted by the owner of a land or house to another person to use such land or house for a term of years or for life of the grantee without paying any rent.

Siam: Dika Nos. 711/124, 152/121, 263/122, 741/123. Land Law 2459, sections 1 and 2. [80]

154. — Unless the right of habitation has been granted in writing and registered in the Land Register:

1) it can be revoked by the grantor at any time on giving one month notice to the

grantee;

2) it cannot be set up against the transferees for value or mortgagees of the land or house.

155. — The grantee can use the land or house as he thinks fit, provided he does not alter or use it to the injury of the grantor.

F.631, 634. G.1092. M.84. S.776. Siam Laksana Betset 42. Dika 610/121, 442/124, 105/125.

156. — The grantee is entitled to share the benefit of his right with his family and servants.

F.632. G.1093. M.81. S.777.

157. — The grantee cannot let the land or house subject to habitation, nor transfer his right even by way of inheritance.

F.634.

158. — The grantee is bound to make the petty repairs and to bear the expenses of ordinary maintenance.

Cf. Obligations s.519. F.605 (usufruct). S.778. [66]

159. — If the grantee uses the land or house contrary to the provisions of the four foregoing Sections, the grantor may apply to the Court for injunction or for cancellation of the grant of habitation and compensation for injury if any. [81]

160. — Habitation is extinguished:

(1) by the expiration of the period provided by contract or will;

(2) by the death of the grantee;

(3) by the renunciation of the grantee;

(4) by abandonment of habitation;

(5) by revocation or cancellation in the cases provided in this chapter.

161. — On extinction of the habitation the land or house shall be returned to the grantor in such condition as it is at the time of extinction without any compensation.

CHAPTER 2.

Superficies.

162. — Superficies is a real right by virtue of which a person, called the superficiary, is entitled to use another person's land for the purpose of owning structures thereon, with or without paying rent.

G.1012, 1016. J.265. M.97. S.675, 779

163. — A right of superficies may be created: for a term not exceeding forty years, or for the term of the life of the land owner or of the superficiary. [82]

In case no term has been agreed upon, each party can at any time determine the contract by giving reasonable notice to the other. But when a rent is to be paid, either one year's notice must be given or rent for one year be paid.

J.268

164. — Any contract or will creating or altering a right of superficies is void unless made in writing and registered on the Land Register.

165. — The superficiary can transfer his right and dispose of it by inheritance.

He can also mortgage the structures erected on the land.

166. — When the superficiary has agreed to pay a periodical rent to the owner of the land, he must perform his obligation notwithstanding the loss of structures caused by *force majeure*.

J.266, 274.

167. — Superficies is extinguished:

(1) by the expiration of the term fixed by contract or will;

(2) by the cancellation of the contract for non-payment of the rent, if any;

(3) by determination of the contract.

[83]

CHAPTER 3.

Charge on land.

168. — A servitude on an immovable may be created by contract or will in favour of a person who is entitled to enjoy periodical profits derived from the immovable.

Such servitude cannot be transferred by the beneficiary unless otherwise provided.

In any other respect, the servitude is governed by the provisions concerning the servitudes created by contract or will.

G.1090. S.781.

Illustration: — A is the owner of a house which is let and the annual rent of which is 3,000 baht. A may establish for the benefit of B a servitude upon the annual profit of his house: so that B be paid an annual sum of 1,200 baht from the rent. If A sells the house to C, C is debtor of this annual sum.

DRAFT LAW

ON

Conflicts of Laws.

CONTENTS.

DIVISION I. [1]

General Provisions.

1. — Whenever a foreign law is to govern, and such law provides that the local law shall be applied, the Siamese law governs and the foreign law shall not be applied.

Illustration.— A question arises in a Siamese Court as to the capacity of a British subject who is domiciled in Siam. According to Section 18 the question is governed by the Law of the Nationality of the person concerned, that is to say in the present case by English law. But English law refers the question to the law of the domicile, that is to say to the Siamese law. Then, by application of the above Section the Siamese law on capacity shall govern and no further reference from that law to English law under Section 18 shall be admitted.

2. — Whenever a foreign law would govern, and its application is contrary to the Siamese public policy or to the safety of persons or property, such law shall not govern.

3. — Whenever a foreign law would govern and the party interested cannot prove, by documentary evidence on which the Court may rely, what is the foreign law on the question at issue, the Siamese law shall govern.

4. — Any period of extinctive prescription fixed by a foreign law shall, if longer than that fixed by Siamese law in similar circumstances, be reduced in Siamese Courts to the maximum period admitted by the Siamese law. [2]

COMMENT.

Extinctive prescription is considered as a matter of public order. It is instituted so that cases be not brought before Courts, and contests extended, indefinitely. Then, i, in a country, the law has adopted, for instance, ten years as the maximum delay for the exercise of rights by a claimant, it must be admitted that this period has been specified after the customs and precedences in this country. The adopted period must be complied with, and the delay specified by the Local Law cannot be overruled by delays fixed by foreign laws.

If the delays fixed in the Siamese and in some foreign laws are not the same, two cases may arise : the foreign delay may be either longer, or shorter, than the Siamese delay.

As explained hereabove, the only danger for the public order in a country is that the Courts of this country should be bound to apply a delay longer than that admitted by its law: no doubt that, if the maximum period of ten years (which has been adopted by the Siamese Codes) would be eventually over-ruled by a maximum delay of thirty years which exists in some countries, such extension would cause unbearable trouble in Siam. The above section forbids this. On the contrary, if the foreign delay is shorter, the public order has no more the same ground for being interested: and, moreover, persons who have made some acts in a foreign country are deemed to know the condition of prescription there and not to have to complain when such specific foreign delay will apply.

[3]

5. — The rules provided by the present Law apply in so for as they are not inconsistent with, or contrary to, the provisions of law governing Family and Inheritance.

Illustration. — A, a French subject, has three children B, C, D. All his belongings are situated in Siam ; their value is 100,000 baht. A makes to B a gift of 60,000 baht. The gift is made in accordance with the Siamese law, and is perfectly valid in its form under Section 5. On the other hand the French law on family and inheritance decides that A, having three children, is not free to dispose by will or gift of more than 14 of his fortune, the other three quarters having to be divided equally between his children. If the future section on conflicts of law in matters of family and inheritance decide that the national law of the deceased shall govern the partition of his estate, the gift made by A to B shall, on A's death, be reduced to 50,000 baht so that C and D may get the part which is reserved to them under the French law on Inheritance.

DIVISION II.

Obligations.

6. — The formalities of a contract or document or of any other act are sufficient if they comply with the law of the place where the contract or document is made or where the act is done. [4]

7. — The substance and effects of an obligation are governed by the law of the place where the obligation arose, unless the parties have agreed otherwise.

Illustrations. — I. — A, living in France, has spontaneously taken care of the affairs of B, who lives in Siam but has some properties in France. The respective obligations of A and B, resulting from the management of affairs without mandate, shall be governed by the law of France (place where the obligations arose).

II. — A, who lives in England, has a branch office in Siam; B, one of A's employees in that branch office, commits a wrongful act, to the prejudice of C, within the course of his employment. The joint liability of A with B for the consequences of such wrongful act is governed by the law of Siam.

8. — Compensation cannot be claimed in a Siamese Court for an act committed in a foreign country where such act is wrongful unless it is also wrongful under Siamese Law. In no case can the compensation granted be greater than that allowed by Siamese Law.

Illustration. — A, a Siamese subject living in Saigon, is creditor of B, a French subject. A takes possession of a property belonging to B to prevent him from evading payment of debt. This constitutes a wrongful act according to the French Law, but not according to the Siamese Law (Obligations, Section 127). [5]

After A has come back to Bangkok, B claims compensation from A before a Siamese Court. No compensation may be granted by such Court.

9. — The remedies of a creditor in case of non-performance, the rights of a creditor over the property of his debtor, the exercise of the right of action of a debtor by his creditor, the cancellation of acts made in fraud of the rights of a creditor, and the assessment of the compensation due for non-performance, are governed by Siamese Law.

10. — No preferential rights or rights to retain a property shall be enforced in Siam other than those admitted by Siamese Law.

11. — The place where the acceptance of the offeree reaches the offerer is the place where the contract is made.

12. — In a contract for the carriage of goods delivery is governed by

the law of the place where the goods are to be delivered.

13. — A gambling or betting contract which may be valid under a foreign law shall not be valid in Siam unless it is also valid under Siamese Law.

DIVISION III. [6]

Things.

14. — The law of the country where the thing is situated governs :

(1) the classification of things as immovables or movables ;

(2) the specification of the real rights which may be claimed in a thing;

(3) the substance and effects of the rights thus recognized by the local law ;

(4) the formalities of contracts, documents or other acts relating to the creation or transfer of rights in an immovable thing when, according to the local law, the validity of the contracts, documents or other acts is subject to their being registered or drawn up by an official ;

(5) usucapion of a thing, and prescription of the right of the owner over a thing.

However the application of the law of the country where the thing is situated is subject to the exceptions provided in the following sections of the present Division.

Cf. Austria 300. Canada 6. Congo 3. Egypt, Mix. 77, Nat. 54. France 3, 2123, 2128. Germany 11, 28. Italy Preliminary 7. Japan 3, 10. Portugal 24. Spain 10.

Illustration. — (N° 4) Section 39 of the Consolidated Land Act of R. S. 127 provides that no transfer of right on a land in respect of which a land certificate has been issued is valid unless registered in the Siamese land registers. [7]

A, a British subject, buys from B, a Siamese subject, a piece of land situated in Siam in respect of which a land certificate has been issued. The contract between A and B has been executed in the form provided by the English Law. The contract is not valid unless the sale be registered in accordance with the Siamese Land Act.

COMMENT.

The above section decides, as far as classification of things or real rights are concerned, to follow the law of the country where the thing is situated (lex loci).

The first point is to decide if a thing is either an immovable or a movable. It appears more convenient to refer for this to the place where such thing is situated. This solution, which was admitted by a judgment of the French Court of Cassation 1887, has been taken as the best in the proposals made by Mr. Roguin in the Conference of the Hague for international law (1900).

As to the determination of the real rights, one knows that every legislation specifies, at least impliedly, which real rights are admitted in the country. The value and the management of such real rights are, as a rule, clearly indicated, as well as their substance and their effects. The criterion adopted by section 14, in conformity with the first point, is that the specification of the real rights be also determined according to the law of the country where the thing is situated.

As far as real rights over immovables are concerned, there are no serious contests as to the criterion for the determination: the French, Italian, Spanish, Japanese systems admit the criterion of "lex loci". As to real rights over movables, some foreign laws have admitted contrarily that the criterion shall be the law of the owner of the thing, or "lex personae" : Austria, France, Italy, Spain. But the most recent jurisconsults disagree to this system, at least for the being and the extent of such rights, and they are of opinion that the application of the "lex personae" is only a mistake coming from quite different considerations relating to the condition of movables in cases of marriage or inheritance, some points which have no connexion with the being or extent of the real rights. This objection, made by jurisconsults as Wharton (America), Westlake (England), Surville and Arthuys (France), Waechter, Savigny, de Bar (Germany,) Brocher (Switzerland), has been approved by many Courts. The above section adopts this system, which has been also authoritatively submitted by Mr. Roguin to the same Conference of the Hague. [8]

The advantage of the criterion of the country where the thing is situated" is certainly a greater simplicity. The system refers to a fact, generally very easy to ascertain. The national law is fully respected for all things which are situated in the country : it governs the nature, substance and effects of the rights over them. But, when the thing is situated outside the country, there is no ground to require the application of the national law to such thing.

The No. 4 of the above section refers to the formalities of any acts relating to rights over immovables. Frequently, not to say always, such acts are not valid, in a country, if they do not comply with some formalities of writing or registering. The section decides that the law of the country where the thing is situated will also govern : the mortgage of a property situated in Siam will not be valid unless made in writing and registered as provided by the law relating thereto. [9]

At last, usucapion and prescription of the right of the owner are also submitted to the same rule. The extinctive prescription has been already dealt with by section 4. As far as things are concerned, the extinctive prescription of the right of an owner in case of lost or stolen properties is also a question of public order, and it will be governed by the Siamese law. Usucapion—which is frequently called acquisitive prescription, and may be considered as the other side of the right of prescription-is no less a matter of public order : the conditions or delays allowing a person to claim acquisition of a thing by way of usucapion, in a country, must be governed, in the same conditions and for the same reasons, by the law of the country where such thing is situated.

15. — When a movable has been removed from a country in order to elude the application of the law of that country, such law shall nevertheless govern.

See : "Acts Conference of the Hague, 1900", p. 69.

16. — The rights in a ship and the validity of their transfer as regards third persons are governed by the law of the place where the ship is registered.

COMMENT. [10]

Ships are registered movables in every country, as far as we know; and they are likely to be subject to important real rights, chiefly to be mortgaged. On another hand, a feature of this kind of movables is that they are displaced frequently, by nature, going from a country to another very easily. The international law has had to consider which law shall govern them in case of creation

of real rights, transfer of ownership, etc.

Supposing the mortgage of a ship, what may happen?

If the ship is mortgaged when in a place of the country to which it belongs, no difficulty because there is no conflict of laws. But if the ship is mortgaged in the course of a trip, when in a place outside the country to which it belongs, is it the law of the place where the contract of mortgage is executed, or the law of the place where the ship has been registered which shall govern? Of course, the best solution of this question is this one which will offer the best guarantees to the parties in the contract. If, in this case, we would admit that the law of the place "where the thing is situated" will govern. some obvious danger may arise. A is the owner of the ship "Protea"' which is registered in Singapore : the "Protea" being in the harbour of Bangkok. A mortgages her to B, such mortgage being made according to the Siamese law and valid; then the Protea" goes along to Shanghai, where A sells her to C; if C is a man of ordinary prudence, he wishes to know if there are not some real rights upon the ship. a mortgage for instance, and, as he cannot take references in ten or fifteen countries where the "Protea" may have called previously, he will refer to Singapore ; but if in Singapore there is no notice of the mortgage made in Bangkok, C will be deceived.

The consequence is that, as far as ships are concerned, and owing to the special position of this kind of things, the law of the place where the ship is situated, if governing, could deceive very easily the parties. Such law, which presents great advantages in case of immovables or ordinary movables, loses its convenience in case of movables so easily removed. The interested persons may be made aware easily of the country to which the ship belongs, of the nationality she enjoys, and of the flag she hoists: and, as a consequence, they will know without difficulty which place is, as a fact, the place of registration of the ship. If the owner of the ship, when creating a real right whatsoever upon her, has been obliged to comply with the law of such place of registration, the register will be a book of birth-and-life of the ship where any interested person will find at once all the particulars he needs about the thing. This consideration has a great importance in matter of sales of ships: sales of ships are always made under some conditions of publicity, and there is in every sea-port a general roll of the sales relating to the ships registered in this sea-port; if sales could be made outside the sea-port, according to all the foreign laws of all these foreign countries where the ship may happen to stay, the general roll would be incomplete and inaccurate, and such inaccuracy would deceive the third persons who use to refer to this roll.

The solution which is adopted by the above section avoids such troubles. (See, in conformity, Despagnets, Droit international privé, p. 723 and foll.)

[12]

Meaning of the word "place." In the above section, the word "country" is substituted by the word " place." In some cases, Consulates of the State A, which are established in sea-ports of the State B, are empowered to deliver certificates (at least provisional certificates) of nationality to a ship the owner of which wants such ship to take the nationality of the State A. In these cases, the word "country" would have meant the State B; the word "place" means the Consulate of the State A, which is really the interesting spot for third persons having to refer to the place of registration.

17. — The law of the residence of the debtor of an obligation governs the transfer of such obligation, and the formalities to be complied with in case of loss or theft of the written instrument of obligation.

ILLUSTRATION AND COMMENT.

The rights and liabilities arising out of an obligation may be transferred (see Draft Civil and Commercial Code : Transfer of Obligations). A, creditor of B for a sum of five hundred baht, may sell to C his right to recover the sum from B. Transfer of shares or debentures are very frequent.

The obligation being created in a country, what will happen if such obligation is transferred to another person in another country? Shall the law of the place where the obligation was

created, (that is to say the place of the residence of the debtor) apply? Or is it the law of the place where the transfer (sale, gift, etc.) is made?

If, in this case, we would admit that the law of the place where the thing (viz. the written instrument of obligation) is situated will govern, dangers will arise for the transferees. A is creditor of B for a sum of 500 baht. Both live in Siam. A goes in a foreign country and transfers to C, who is living there, the instrument of the obligation. There may be in the foreign country no law about the validity of such a transfer, while in Siam it is valid only if notified to the debtor. C makes no notification to B who, on A's return, pays him his debt. Then C comes and claims from B, by virtue of the transfer, payment of the same debt. If the law of the country where the transfer takes place was to govern, the transfer would have to be declared valid, notwithstanding the lack of notification, and B would have to pay his debt a second time to C. On the contrary, if the law of the residence of the debtor is to govern, the transfer shall be declared invalid and B will not have to pay a second time. It seems only just that the debtor should not be bound to pay a second time when his first payment was valid under the law of his residence; in so doing he has committed no imprudence while the transferee ought to have enquired, before accepting the transfer, whether he had, or not, a good recourse against the debtor. **[13]**

The same rule is advisable also in the case where the written instrument of the obligation has been lost by, or stolen away from, the owner. The owner, as a rule, hastens to comply with all formalities which will enable him to find back the instrument, and also to forbid any finder or offender to transfer it dishonestly to third persons. These formalities are specified in every country, chiefly as far as shares and debentures are concerned. For the same reasons as set up above it is necessary to decide that the formalities to be complied with are those of the country of the residence of the debtor, because the debtor is the person who more than anyone else must be made aware of any opposition to the performance of his obligation; any other person can easily find out whether or not there is any opposition notified to such debtor, either personally or by means of advertisements as the case may be; while should the formalities of any other country be declared, sufficient, neither the debtor nor any transferee of the instrument could ever be sure that there is no opposition in some country of the world. **[14]**

DIVISION IV.

Capacity of Persons.

18.—The capacity of a person is governed by the law of his nationality.

But if an alien does an act in Siam for which he would have no capacity under the law of his nationality, he is deemed to have capacity for it in so far as he would be capable under Siamese Law.

Cf. Austria 4, 34. Congo 2. France 3. Germany 7. Italy 6. Japan 3. Portugal 24, 27, and Commercial Code 12. Spain 9. Swiss 7, 7b. Hague, Bills, 83.

Illustration. — A, a French citizen of full age, is interdicted as a spendthrift and provided with a curator the assistance of which is required by French Law for the validity of any contract of sale of A's property. Interdiction of spendthrifts is not known to Siamese Law. If A comes to Siam and sells there his yacht to B without the assistance of his curator, such sale shall be valid. [15]

19. — If the nationality of a person is unknown or cannot be proved, the law of his residence is deemed to be the law of his nationality.

Cf. Germany 29. Japan, Law concerning the Application of laws, 27, 28.

20. — If it is uncertain whether an alien having property in Siam is living or dead, a Siamese Court may, according to Siamese law, appoint a manager of his property, and make an order declaring that such person has disappeared, but only in regard to property in Siam or to such legal relations as are subject to Siamese law.

Cf. Austria 276. Germany (introductory Act to the Civil Code) 9. Japan (Law on application of Laws in general) 6.

21. — Representation of minor by parent and management of the property of the minor by his parent are governed by the law of the nationality of the parent.

Cf. Congo (decree of the 20th February 1891) 6. Germany 18, 19, 20. Japan 20. Switzerland (law 25th June 1891), 7, 8, 9.

22. — The cases in which the minor having no parent, or a person of full age, may be placed under guardianship, and the duties and the power of the guardian, are fixed by the law of the nationality of such minor or person. [16]

However a Siamese Court shall not appoint a guardian to a person of full age except for a cause admitted by Siamese law.

Cf. Germany 8, 25. Japan 4, 5, 23, 24. Sweden (Law respecting International legal rights). Switzerland 10-18, 29, 30, 33. Conventions Hague 13 June 1902, 1-8, and 17 July 1905, 1-13.

COMMENT.

Questions relating to guardianship are essentially questions of capacity, a person under guardianship being more or less incapacitated. They must therefore be governed by the national law of the party concerned.

The second paragraph of section 22 is directly connected with the second paragraph of the above section 18. If the consequences of a status of incapacity unknown to Siamese law are not admitted in Siam, it follows a fortiori that the Siamese Courts cannot be expected to decree such a status. The second paragraph of section 18 is intended for instance to protect persons residing in Siam against the consequences of the incapacity of a spendthrift who has been interdicted by his national Courts. The interdicted spendthrift shall be considered as capable by the Siamese Courts. It is self-evident that if the Siamese Courts do not recognize the incapacity of a person who has been interdicted abroad as a spendthrift, they cannot be expected to place an alien under guardianship on the ground that he is a spendthrift.

23. — A juristic person lawfully constituted according to a foreign law shall enjoy civil personality in Siam, subject to the restrictions provided by sections 24, 25 and 26. [17]

Cf. Germany 10. Belgian Commercial Code 128. Spain (Civil Code) 28 and (Commercial Code) 15 21. Italy (Commercial Code) 230.

See Comment under section 26.

24. — A juristic person lawfully constituted according to a foreign law and which sets up a principal office in Siam, or fulfils its principal object or does its principal business in Siam, cannot take advantage of its civil personality in Siam, unless it satisfies to the requirements of the Siamese Law as to the formation, registration, management, dissolution and liquidation of a juristic person of the same kind or of the kind most resembling to it.

Cf. Belgium (Commercial Code) 129. Germany 10. Japan (Commercial Code) 258, 259. Spain (Commercial Code) 15, 21. Italy (Commercial Code) 230, 231, 232.

See Comment under section 26.

25. — A juristic person lawfully constituted according to a foreign law and which sets up a branch office in Siam cannot take advantage of its civil personality in Siam unless it has satisfied to the requirements of the Siamese Law as to the registrations and public notifications to be made by a juristic person of the same kind or of the kind most resembling to it.

Cf. Belgium (Com. Code) 130. Japan (Com. Code) 255, 257,

360. Spain (Com. Code) 13, 21. Italy (Com. Code) 230 to 232.

See Comment under Section 26.

26. — Section 23 shall apply to the juristic persons constituted according to the law of a foreign country only if the juristic persons lawfully constituted according to Siamese Law enjoy in a like manner civil personality in such foreign country. [18]

COMMENTS

to sections 23 to 26.

The sections 23, 24 and 25 concerning juristic persons embody the theory contained in section 10 of the German Law and in sections 255 to 258 of the Japanese Commercial Code.

As to the general lines of the system, section 23 lays down the principle in the matter, viz. that the Government of this country are ready to grant to a juristic person lawfully constituted under a foreign law the same status as a juristic person enjoys in Siam. Sections 24 and 25 are restrictions required by public order, because, as soon as a juristic person has in Siam its principal office or a branch, or does in Siam important business, it becomes essential that this juristic person complies at least with the regulations of this country which concern public order.

Under this system what will be the position of the parties?

1° A juristic person lawfully constituted under a foreign law has no good reason to complain, as it is assimilated to the Siamese juristic person and enjoys the same juristic position (section 23), and has to comply with the requirements of the Siamese law, which is not a drastic one, only as to the questions of formation, management, registrations, etc.;

2° By section 23 the Siamese Government does not grant to a juristic person constituted under a foreign law more rights than to a Siamese juristic person. It submits a juristic person whose principal office is in Siam to the common rules of this country as to its formation, management, registration, etc. [19]

However, the Law on the Conflicts of Laws lays down, by section 26, a principle of reciprocity.

Of course no Government is bound to grant the national status to juristic persons constituted under a foreign law : the more so if the foreign country does not grant its own status to juristic persons constituted under the law of this Government.

27. — The nationality of a juristic person is that of the country where this juristic person has its principal office.

COMMENT.

Nothing in sections 23 to 26 deals with the question of nationality of the juristic persons, and nothing will allow a Siamese Court to decide that the interested juristic person must be considered under section 23, 24 or 25 as being of Siamese nationality.

However as it may be important to know which is the nationality of a juristic, as well as of a natural person, section 27, dealing with this point, embodies the criterion which prevails at present in private international law: “the place where is the principal office of the juristic person.”

ANNEXES.

THE LAW OF PROCEDURE

IN

CIVIL CASES.

CONTENTS

The Law of Procedure in Civil Cases.

THE LAW OF PROCEDURE IN CIVIL CASES. [1]

CHAPTER 1.
Preliminary.

1. — This Royal Decree shall be cited as the Law of Procedure in civil cases of the year 127.

2. — All Courts of Justice whatsoever throughout the Kingdom shall be governed by the provisions of this Royal Decree saving always. Special Courts already provided with rules of their own, and saving further that the provisions of this Royal Decree may be used by, but shall not be obligatory upon, any Courts in which ecclesiastical customs are in use.

CHAPTER 2.
Concerning the Jurisdiction of the Courts.

3. — After final judgment no further proceedings may be taken by or on behalf of the parties or privies to that judgment.

4. — No person invested with the duties of a judge shall be entitled to exercise any function pertaining to such position in any of the following cases, that is to say :

1. If such person shall have any pecuniary or proprietary interest in the suit in question; or

2. If such person is related to any of the litigants, that is to say, is either an ascendant or descendant to any degree, or being a collateral to the third degree, or by affinity within the second degree; or

3. If such person shall have been called as a witness in the cause, either as to what he knew or has seen or by reason of any special knowledge he may have had in connection with that case. [2]

5. — The Court may at any stage in a suit try to bring about a compromise as to the matters in dispute provided always all parties to such suit are present at the same time.

CHAPTER 3.
Concerning Venue.

6. — On the entry of a plaint regard shall be had to the various grades of Courts, that is to say the plaint shall be entered in that Court which, having regard to the nature of the case, is by virtue of its constitution and by law, the proper and competent Court to decide the matters set out in such plaint.

7. — Cases concerning immovable property or concerning any right to or interest in immovable property, and all cases concerning movable property shall be entered in the Court within the territorial jurisdiction of which the property is situate or within which the defendant earns his livelihood, provided always that if a plaintiff shall be desirous of entering a plaint in the Court within the territorial jurisdiction of which the defendant has his place of abode, the Court may in its discretion on the application of the plaintiff shewing [=showing] that the trial of the action will thereby be facilitated, grant leave to enter the plaint accordingly. In any other case, the plaint shall be entered in the Court within the territorial jurisdiction of which the property is situate.

8. — If and whenever any of the property of the description mentioned in Section 7 shall abut or be situate on the confines of adjoining districts in such a way that it cannot be certainly said within the jurisdiction of which Court such property is situate, then and in such cases the Court shall, if satisfied after consideration that there is real doubt as to which [3] Court has jurisdiction over such property, make a note of it to that effect and proceed with the case in all respects as if no question as to the jurisdiction of the Court existed. Should the defendant raise the plea of no jurisdiction in his motion of appeal, the Court of Appeal, if of opinion that the doubts of the Court of First Instance were well founded, shall dispose of the appeal without regard to any such plea of no jurisdiction as aforesaid.

9. — The proper Court in which to enter a civil action other than the classes of cases hereinbefore mentioned shall be determined in accordance with the following rules, viz: —

1. The plaint shall be entered in the Court within the territorial limits of which the cause of action arose; or

2. Within which the defendant is earning his livelihood.

The Court in its discretion may order the plaint to be entered in either of the Courts mentioned in the two preceding rules, provided always that

with regard to cases falling under sub-section 1, a plaintiff who can show that the defendant has property within the jurisdiction of the Court shall be entitled to enter his claim in that Court.

10. — If in any action for damages founded on a tort either to the person or to movable property the cause of action shall arise within the territorial jurisdiction of one Court, and the party whom it is alleged is responsible for such tort shall earn his livelihood within the territorial jurisdiction of another Court, then and in any such case the plaintiff may, at his option, bring his action in either one or the other of such two Courts as aforesaid.

11. — If any immovable property shall be situate in the same district but so that part of such property shall respectively be subject to the jurisdiction of different Courts, then and in such cases the plaintiff may bring an action in any one of such Courts, notwithstanding that such action may relate to parts of such property as are situate within the territorial jurisdiction of other Courts as aforesaid. [11]

12. — All the above regulations set out in this chapter are to be understood as applicable only as between the Court and the plaintiff in reference to issue of a summons for service on the defendant in the first instance. [4]

With regard to all subsequent proceedings, the defendant may by motion ask for a change of venue, provided always such motion shall specify in particular the points relied on by such defendant. If the Court in which the plaint has been entered and to which a motion has been submitted as aforesaid shall be of opinion that to further try the case would cause an injustice to any party, then and in such cases the Court may make an order transferring the trial of the case to such other Court as will not entail such injustice as aforesaid.

13. — If any party to an action in any Court provided with only one judge shall be on bad terms or in disfavour with such judge, such party may obtain relief by duly submitting a motion to the Court next above in grade to such former Court. Such motion shall set out in detail all or any of the circumstances which are provided for in section 4, if any such there be, or any other circumstances which are of so serious a nature as would reasonably induce such higher Court to be of opinion that such party would not have a fair trial. The higher Court may in either of such cases as aforesaid make an order transferring such case to another Court or to another judge for trial, provided always such motion as aforesaid shall be submitted without delay and before the day fixed for trial. No motion may be submitted after the day fixed for trial, and no appeal either to the Court of Appeal or *Dika* Court shall lie from any order made by the higher Court.

It shall not be obligatory on the Court below to stay the trial of the action pending the order on any motion duly submitted as aforesaid, until actual receipt of an order from the higher Court.

CHAPTER 4.
Procedure for Petty Cases.

14. — Any case except as is hereinafter mentioned relating to money, goods or property or any matter or thing in issue of an amount or value not exceeding 200 ticals or involving punishment by imprisonment not exceeding 6 months shall be considered a petty case. [5]

Provided always any action relating to land of whatever value, other than an action for rent of land, such rent not exceeding in amount 200 ticals, or an action for eviction of a tenant from land of a rental value for the time being not exceeding in amount 200 ticals per month, shall not be considered to be a petty case.

In any case relating to property or a fine and involving several claims each of an amount or value not exceeding 200 ticals from several defendants respectively or involving liability to a term of imprisonment not exceeding six months in duration on the part of several defendants respectively then and in such cases, although by grouping the several liabilities of the defendants together the case may be considered as one involving a claim exceeding 200 ticals or a term of imprisonment exceeding six months, the amount claimed from or the liability to imprisonment on the part of any one of the defendants shall be taken to be the test for ascertaining whether such case is a petty case and shall be treated as such accordingly.

All cases whatsoever which are to be considered as petty cases shall be tried in a summary way according to the procedure as provided in this Chapter.

15. — In a petty case the plaintiff may present a written plaint to the Court as in an ordinary case or may appear in person and make a verbal statement of his claim to the Court.

If the plaintiff shall make a verbal statement to the Court as aforesaid, the Court shall make a written summary of the points of the claim of the plaintiff and the plaintiff shall attach his signature thereto.

In a petty case the Court shall after receipt of the plaint issue a summons requiring the defendant to answer the claim forthwith.

16. — The issue of the summons mentioned in the preceding section shall be made in the following manner, that is to say: —

1. The summons shall state the substance of the claim including the amount or value of the property claimed. [6]

2. The name of the judge and the seal of the Court shall appear on the summons.

3. The summons shall be shown to the defendant and a copy left with him.

17. — When the defendant has received service of the summons he shall personally or by a duly appointed attorney make answer to the claim of the plaintiff within the prescribed time. The answer of the defendant may be either a written statement submitted to the Court as in an ordinary case or a verbal statement made to the Court.

If the defendant shall make a verbal statement to the Court, the judge shall make a summary in writing thereof and the defendant shall attach his signature thereto.

In giving judgment in a petty case it shall not be necessary to give a written detailed judgment. A verbal judgment shall suffice, but in the case of verbal judgment the Court after judgment shall make a written summary of the points adjudicated upon.

18. — Save as is herein before provided the rules and regulations appearing in this statute shall so far as the context allows or admits of be read as applicable to ordinary and petty cases alike.

CHAPTER 5.
Procedure for Ordinary Cases.

19. — In all civil cases relating to goods or other property of an amount in value exceeding 200 ticals or involving any claim or right arising from any cause, either directly or indirectly, in which the amount or value in dispute exceeds 200 ticals or relating to the recovery of damages exceeding 200 ticals in amount, and in all cases of land the plaintiff shall submit a written plaint to the Court and the Court shall issue a written summons for service on the defendant together with the plaint.

20. — When the defendant has been served with the summons and the plaint as mentioned in the preceding section the defendant shall within eight days submit his answer to the Court, but can in no other way demur to the right of the plaintiff to sue. If the defendant wishes to demur to the right of the plaintiff to sue on any ground he may plead such grounds in his answer. [7]

In addition to the plaint or answer submitted to the Court the plaintiff and defendant shall submit a sufficient number of copies of the plaint and answer for service on the respective parties.

21. — In case of service of any process on more than one defendant each defendant shall be served with a separate document of such process.

22. — In case of any action against a company which has been registered as a legal corporation the action shall be brought against the company in the name of the company and the summons shall be served at the office of the company which is within the territorial jurisdiction of the Court issuing the summons. Service of the summons on a director or manager at that office shall be considered sufficient service.

23. — In case of an action against a partnership which has not been registered as a legal corporation the action may be brought against the partnership in the name of each of the partners or of any one or more of them. If the partnership trades under a trade or firm name the action may be brought against the partnership in its trade or firm name. The Court shall issue a summons for service on any person at the office of the partnership who is reasonably believed to be the manager of the partnership.

24. — If by reason of circumstances arising after the plaintiff shall have brought his action either party shall be desirous of amending his

plaint or answer as the case may be, the Court may in a proper case at any time before judgment allow such amendment to be made. The Court may make such order as is necessary in the interests of justice requiring the plaintiff or defendant as the case may be to adduce evidence in support of such new circumstances arising as aforesaid, or the Court may give the plaintiff or defendant as the case may be an opportunity of rebutting such statements on amendment as aforesaid.

25. — The defendant in his answer may raise a counterclaim but in such case the defendant shall pay fees on the value of such counterclaim in all respects as if it were an independent action. The plaintiff must answer the counterclaim of the defendant within eight days or such further time as the Court shall see fit to allow.

In such a case the Court shall try the original case and the counterclaim together in one record or the Court may try the cases separately if the Court, guided by considerations of convenience, shall see fit to do so. If the counterclaim is separate from and independent of the original claim, and defence by way of counterclaim cannot be raised, the Court shall order the defendant to enter an independent action.

26. — After the plaint and answer have been duly submitted to the Court it shall not be necessary to settle the issues between the parties; but where both parties by motion have requested a settlement of issues or in case where by reason of the intricacies of the issues to be tried the Court is of opinion that the trial of the case will be facilitated by a settlement of the issues the Court may settle the issues to be tried.

27. — In settling the issues of any case the decisive elements of the case, whether they shall be decisive of the case wholly or in part only, shall be put down in writing, that is to say, the contentions raised by the plaintiff and the contentions or admissions of the defendant respectively shall be compared together. These contentions so compared together shall be called the points in issue. Any point not admitted by the plaintiff or defendant as the case may be shall require proof. Any disputed point of law may be considered as a point in issue and dealt with accordingly, but no evidence shall be adduced in its support, but in case a point in issue shall refer to the law of another country or to a religious or any other [9] custom evidence must be adduced in support. In settling the issues to be tried, if both parties shall agree on any point as a point in issue and the Court shall be of opinion that it may reasonably be considered as such, such point shall be dealt with in the issues to be tried. In any case in which there has been a settlement of issues the Court shall as far as possible deal with the points in issue so settled in order and then give judgment as to the whole.

28. — After the defendant has duly submitted his answer to the Court

or after settlement of the issues by the Court a period of at least ten days shall be allowed to elapse before fixing the date of hearing. On the expiration of such ten days the Court shall issue a summons fixing the date of hearing. Provided always the Court may either on an application by any party to the suit alleging circumstances of a pressing nature or without any application, on any ground which the Court in its discretion shall deem sufficient, fix the date of hearing within the aforementioned period of ten days.

29. — If the parties are in person before the Court the Court may appoint the day for hearing verbally, and in such case the Court shall make a note thereof in writing. In any other case the Court shall issue a summons appointing the day for hearing and serve it on the parties.

The parties receiving the summons shall endorse their names on the receipt attached to the summons and hand such receipt to the person serving the summons for re-delivery to the Court. If the parties receiving the summons cannot or will not endorse their names as aforesaid, the person delivering the summons shall endorse on such receipt as aforesaid the day, time, and the circumstances of service of the summons and deliver it to the Court.

30. — If in the plaint or the answer or in any motion, any document is referred to and relied on as evidence, a copy of such document shall be made and attached to the plaint or answer or motion as the case may be. The original of such document wherever possible shall be produced for the inspection of the Court. If for any reason it shall not be possible to produce the original document to the Court, explanation of its non-production shall be made and a copy delivered in its stead.

If any party to the suit shall intend to rely on any documentary evidence after the plaint or the answer has been submitted to the Court and not so referred to and relied on as herein before mentioned, the party intending to rely on such documentary evidence shall make and send a copy of such documentary evidence to the other party to the suit at least three days before the hearing. If the party relying on such documentary evidence shall submit a motion to the Court showing that it is not reasonably possible to make and send a copy of such documentary evidence as herein before directed, the Court may take such steps as the Court in its discretion sees fit, to enable the other party to examine the original of such documentary evidence. Provided always the discretion of the Court in such case shall be limited to special cases of necessity. [10]

If any party after due receipt of a copy of the documentary evidence relied on by the other side shall raise the objection that there is no original or that it is not a true copy of such original, then and in such cases such objections shall be sent to the party relying on such evidence before the date fixed for the hearing.

If such objections are not raised till the day of hearing the costs of witnesses brought by one party to rebut objections to such documentary evidence raised by the other party shall be borne by the party raising the objections.

If any party to a suit who has been served with a copy of documentary evidence relied on by another party shall have any doubts as to its genuineness or otherwise such party may examine the original.

31. — When the parties to the suit have been served with the plaint and answer respectively and before the date appointed for the hearing, that is to say, during the time allowed to both parties to prepare their respective cases according to Section 28, both parties shall submit a list to the Court setting out the number and names of the witnesses (if any) and the nature of any other evidence they respectively propose to rely on.

If the party can bring his witnesses or produce his other evidence to the Court himself he may do so. If the party cannot do so, the Court shall on application made before the day of hearing by the party relying on such witnesses or other evidence as aforesaid issue a summons ordering the attendance of such witnesses or the production of such other evidence as aforesaid but so that such witnesses shall have at least two days' notice. [11]

32. — If the Court after hearing the sworn statement of any person, is satisfied that any witness of any party to the suit is, by reason of circumstances beyond his control, unable to attend on the day of hearing and that the evidence of such witness is material to the issue to be tried, the Court may, after hearing all the other witnesses who have attended, adjourn the further hearing of the case for the attendance of such witness so unable to attend as aforesaid.

33. — In general the Court shall try a case on the day duly appointed for the hearing, provided always the Court may if necessary adjourn the hearing to another day.

34. — In general cases shall be heard in the order in which they are numbered. But if for any reason the Court shall see fit to hear any case out of its due order such as for instance when a person is under detention notwithstanding a judgment ordering his release, or in any other case of a pressing nature, the Court shall affix a red seal to the outside of such record and the Court shall bear such case out of its due order.

35. — On the day appointed for the hearing of any case the Court shall read through the plaint and answer respectively. If any contention raised in the plaint shall be a limited by the defendant, no further proof in support of such contention shall be necessary.

CHAPTER 5. PROCEDURE FOR ORDINARY CASES.

36. — If there shall be no time to commence the hearing of any case or to finish the hearing of a case commenced on the day appointed for hearing by reason of the state of business of the Court, the Court may adjourn the hearing or further hearing of such case as the case may be and shall inform all parties concerned accordingly. Such verbal [12] information shall have all the same consequences as if the parties affected had been duly served with a written summons appointing the date of further hearing.

37. — Any party to a suit, of which the Court has fixed the day for hearing, due notice of such date having been served on the parties respectively, may apply to the Court for an adjournment and the Court may in its discretion grant the application. If any case appointed for hearing on any one day shall be unable to be heard by reason of insufficiency of time or by reason of circumstances which in the opinion of the Court are such as to necessitate an adjournment, then in either of such cases, the Court may order an adjournment. Provided always a note shall be made of the circumstances under which such adjournment was ordered.

38. — The Court in its judgment shall set out the points in issue to be adjudicated upon and the grounds for its decision. If more than one judge is trying any case the judgment shall be in accordance with the opinion of the majority. In case any judge shall dissent, he shall write and attach to the record the gist of his dissenting opinion and may add his reasons for so dissenting.

39. — No judgment shall be given for anything in excess of or not included in the claim of the plaintiff, saving always : —

1. In an action for the recovery of land, which must be understood to include eviction of the defendant, judgment for the recovery of the land and for eviction may be given in one and the same action. A judgment for eviction is understood to include the eviction of all the relatives and dependents of the defendant who are on the land in question, excepting always any relative or dependent who may be able to adduce special rights.

2. In an action claiming property of any nature, if it be found that the plaintiff is entitled to only a divided part of the amount claimed, judgment may be given for such divided part without any new action being instituted.

3. In an action in which any claim is made for a debt arising from a loan mortgage or in any other way, together with [13]

interest on the total amount claimed up to the date of the action, the Court may order interest to be paid from the date of the action until the judgment is satisfied.

4. In an action claiming rent calculated up to the date of the entry of the action, the Court may order rent to be paid until the judgment is satisfied.

40. — If the decision in any case shall depend wholly or in part on some point pending but not adjudicated upon, or on some point which it is desirable should be decided by an executive officer, the Court may postpone the further hearing of such case until such points be adjudicated upon.

41. — If during the trial of any case it shall appear that a criminal offence has been committed which, if found to be true in fact, would have the effect of modifying the judgment in the case so before the Court as aforesaid, the Court may postpone the further hearing of such case until such time as the criminal offence shall have been adjudicated upon.

42. — If any party to a suit shall behave in an improper manner the Court may order him to be ejected from the Court.

43. — All documents and papers whatsoever constituting the record shall be written in ink. If any mistake shall occur it shall not be scratched out and rewritten; it shall merely be crossed out and the writer shall sign his name in the margin.

44. — The judges shall be responsible for all records and for the safe custody thereof. The documents and papers constituting the record shall be kept together in one record, but it shall not be necessary to fold and tie them up or put them in a sealed envelope.

If the plaintiff or defendant or any witness has any reason to believe that the record will in any way be tampered with he may apply for a copy of the same. If the applicant himself shall make a copy no fees shall be charged. Provided always if an official of the Court shall examine and compare such copy with the original, fees shall be charged according to scale. Such official shall sign, seal and affix stamps to the copy so made. The above provisions shall apply to all persons requesting a copy of the record.

CHAPTER 6. [14]

Non-Appearance of the Parties and Judgment by Default.

45. — If the defendant does not make answer to the claim of the plaintiff either in writing or verbally within the prescribed time and fails to bring to the notice of the Court the reasons for such neglect or fails to ask for an adjournment, then and in such cases the defendant shall be held to be in default, and the Court may fix the day of hearing forth with : provided always the Court shall give due notice of such date to the defendant. On the day of hearing the defendant who is so in default as aforesaid may give evidence himself on oath and cross-examine the witnesses of the plaintiff, but may not call any evidence on his own behalf.

46. — If on the hearing neither the plaintiff nor defendant nor their attorneys respectively appear, and if no explanation shall have been made to the satisfaction of the Court regarding such non-attendance or if no application shall have been made for a postponement, then in either of such cases the Court may strike out such case from the hearing list : provided always the plaintiff may, subject to the rules of limitation of actions, bring a fresh action. The fees to be paid on such second action shall be in the discretion of the Court.

47. — If the plaintiff or his attorney shall not appear on the day of hearing and the Court is satisfied that the plaintiff has been duly served with notice thereof, the Court may order the case of the plaintiff to be struck out and may further order the plaintiff to pay the whole or any part of the costs of the defendant as the Court in its discretion shall think fit.

48. — If the defendant or his attorney do not appear on the day of hearing and fail to satisfy the Court of the existence of imperative reasons for such non-appearance, the Court, on being satisfied after enquiry that the defendant duly received the summons appointing the day of hearing, may hear *ex parte* the case of the plaintiff who has duly appeared, and [15] give judgment according to the nature of the case.

49. — If any party shall allege inability to attend the Court by reason of illness the Court shall on application by any other party to the suit appoint an official to examine the party alleging sickness, and such official so appointed shall make a report to the Court of the result of his examination. The party requesting such examination may either himself accompany the official making such examination or may appoint a doctor to go in his stead. If the official making the examination shall state on oath to the Court that the condition of the party alleging illness is not such as to prevent his attendance at Court, the Court may proceed with

the case as in default of appearance.

50. — In the event of any case being struck out of the hearing list by reason of non-appearance, any party to the suit may apply to have the suit reinstated, provided always such application shall be made within the prescribed time for bringing such action. On payment of fees and reasonable expenses the Court shall re-enter the case for hearing. In any case in which the Court shall have given judgment in default of appearance of the defendant, the defendant may apply to the Court for the re-hearing of the case within fifteen days from the date of such judgment on the ground that it was not reasonably possible to appear on the day of trial. If the Court after investigation is satisfied that there were reasonable grounds for such non-appearance, the Court shall dismiss the judgment in default of appearance and re-try the case.

If the defendant by reason of circumstances beyond his control cannot apply to the Court within fifteen days from the judgment in default of appearance as aforesaid, then and in such cases the Court may accept the motion of the defendant within fifteen days from the cessation of such inevitable circumstances as aforesaid. In general the Court shall order the defendant in such cases to pay the costs which the plaintiff has already incurred; provided always the Court may in its discretion make such other order as is reasonable under the circumstances.

CHAPTER 7. [16]

Concerning Writ of Attachment before Judgment.

51. — A plaintiff in any case involving a claim of 1,000 ticals or upwards, whether such claim shall relate to goods sold or to money lent or on deposit or to accounts or to rent for or hire of real property or goods as the case may be, may apply to the Court for an order that the whole or any part of the property of the defendant may be attached and put in the custody of the Sheriff in lieu of a bond or sureties for the amount of the claim.

The plaintiff may make such application as aforesaid either at the time of submitting his action or at any time before judgment.

The Court shall issue such a writ of attachment as aforesaid on an *ex parte* application under the following circumstances, that is to say, if the plaintiff shall satisfy the Court on the oaths of two or more persons : —

1. That the claim of the plaintiff is true and

2. That the defendant is absent or his place of abode cannot be found, or

3. That the defendant has removed or is intending to to sell or has concealed or is intending to conceal or to make away with or transfer his property to other persons with intent to defraud his creditors.

52. — At the time of issue of any such writ, the Court may require the plaintiff to deposit in Court a reasonable sum of money as security for any damage that the defendant may suffer by reason of the issue of such writ without reasonable cause.

53. — The defendant may apply for a withdrawal of the attachment of his property upon reasonable cause shown and upon terms as to security or otherwise as the Court shall think just.

54. — If in any action involving a claim of 200 ticals and upwards, the [17] plaintiff shall at any time, whether before submission of plaint or before final judgment, prove by evidence to the satisfaction of the Court that he has a good cause of action, then and in such cases he may apply to the Court for a warrant for the arrest of the defendant, which warrant may be executed anywhere within the territorial sovereignty of His Majesty.

Before the issue of such warrant of arrest as aforesaid, the Court shall require satisfactory proof as to the following matters that is to say : —

1. That the defendant is in hiding in order to evade service of the summons of the Court, or

2. That the defendant has removed or concealed his property or has concealed or destroyed or altered or torn up any books of account which relate to his work or business with intent to defraud the plaintiff or other of his creditors, or

3. That the defendant from his conduct or the manner in which he is carrying on his work or business will leave or is likely to leave the jurisdiction of the Court.

55. — Any person arrested under such warrant as mentioned in the preceding section shall be detained in custody until such time as security is given in a sum not exceeding the amount of the claim with costs that he will not, without permission, leave the jurisdiction of the Court. Provided always no detention shall exceed six months in duration.

56. — Any defendant so arrested may apply by motion to the Court to be released. Provided always that on the hearing of any such motion the party arrested as aforesaid shall adduce evidence to show that he was not preparing to evade the jurisdiction of the Court or to avoid due payment of the debt.

57. — If it shall appear to the Court that the arrest of the defendant or the attachment of his property was brought about without sufficient cause; or if the Court shall dismiss the plaintiff's action and it shall appear that the plaintiff had no sufficient reasons for bringing such action, then and in such cases the Court may order the plaintiff to pay compensation to the defendant. [18]

58. — If the defendant shall by motion bring to the notice of the Court that the plaintiff is not subject to its jurisdiction and shall pray that the plaintiff be ordered to deposit money in Court as security for all costs and expenses to which the defendant may be put and which the defendant in the event of the plaintiff losing his action may be unable to recover, then and in such cases the Court may order the plaintiff to deposit in Court such sum as it thinks right and proper under the circumstances. If the plaintiff fail to deposit security in accordance with the order of the Court, his action shall be dismissed.

CHAPTER 8.
Payment into Court.

59. — When the defendant submits his answer he may at the same time deposit in Court the whole sum claimed or such part as he in his defence admits liability for or such other sum as he thinks sufficient to cover the claim of the plaintiff. From the date of such deposit the defendant shall not be liable for interest or costs in respect of that sum.

If after answer submitted, the defendant is desirous of making such deposit in Court as aforesaid, he shall first obtain the leave of the Court so that the plaintiff may receive notice to take it out. The defendant shall not be liable for interest in respect of the sum so deposited from the date of deposit, but all costs subsequently incurred shall be ordered to be paid at the discretion of the Court.

60. — If the plaintiff accepts the money so deposited in Court in part satisfaction of his claim only, the plaintiff may continue his case for the balance. Provided always if the Court after hearing the case shall be of opinion that the claim of the plaintiff is fully satisfied by the sum so paid into the Court as aforesaid, the plaintiff shall pay the costs occasioned by his refusal to accept such sum in full satisfaction. [19]

61. — If the plaintiff accepts the money paid into Court by the defendant in full satisfaction of his claim the Court shall make a note to this effect in the record and give judgment accordingly. In general, the defendant shall pay all costs.

CHAPTER 9.
Abandonment, Withdrawal and Voluntary Settlement of Actions.

62. — After entry of plaint the plaintiff shall come to the Court to obtain a summons for service on the defendant. If the plaintiff shall neglect to obtain such summons as aforesaid, and shall fail to bring to the notice of the Court within a period of fifteen days counting from the date of the entry of the plaint any reasons for such neglect, then and in such cases the Court may remove such plaint from the cause-list.

63. — Before service of the summons on the defendant and before submission by the defendant of his defence to the Court, the plaintiff may withdraw his plaint altogether or withdraw it for the purpose of entering an amended plaint. If the defendant shall have been served with the summons and shall have put in his defence, then and in such cases it shall be necessary for the plaintiff on motion to obtain the leave of the Court to withdraw his plaint altogether or for the purpose of entering an amended plaint and notice of such motion shall be given to the defendant. The granting of any such leave and any order as to costs shall be in the discretion of the Court. If the plaintiff' shall obtain the leave of the Court to make any amendment in his plaint involving a reduction of the value of the amount in dispute, all subsequent costs shall be calculated on the basis of the value of the amount in dispute so reduced as aforesaid. Provided always in any case in which there are joint plaintiffs, no one plaintiff may withdraw his name without the joint consent of the other plaintiffs. [20]

64. — The re-entry of a plaint which has by leave of the Court been withdrawn by the plaintiff for the purposes of amendment shall be subject to the ordinary law of limitation in all respects as if no previous plaint had been entered.

65. — If in any case the parties come to an agreement as to the matters in dispute themselves or a compromise be arranged between them by a third party, then and in either of such cases if the agreement or compromise be not contrary to law, the Court shall add a memorandum of the points so agreed upon or compromised as aforesaid to the record and shall give judgment between the parties in accordance with the terms of the agreement or compromise as the case may be.

66. — If judgment has been delivered in any case, or if steps are being taken to enforce such judgment, no private agreement as to the matters

adjudicated upon may be made by the parties. Provided always during the re-examination of the case by the Courts of Appeal, such private agreement as aforesaid may be made.

CHAPTER 10.
Concerning Service.

67. — In general all plaints, summonses, decrees and orders of the Court shall be served by an officer of the Court, provided always as a general rule where application has been made for any such process the applicant shall accompany the officer serving such process. Subpoenas for witnesses shall be served by the applicant himself unless the Court in its discretion shall otherwise direct.

68. — All summonses or other documents shall be served in the day time between sunrise and sunset.

69. — If the person serving the summons or other process fail to meet [21]
the person for whom such summons or other process is intended and shall serve such summons or other process on any person to whom it is not directed, that is to say on any person over twenty years of age who is a relation of or of the same household as the person for whom such summons or other process is intended and who lives in the house or other the place of business which is known to be the dwelling house or place of business of the person to whom such summons or other process is directed as aforesaid, such service or any other service carried out in accordance with the terms of any order of the Court shall be considered sufficient service according to law.

70. — In cases where the person to be served with a summons or other process of the Court cannot be found, there being no person to receive the summons or other process in default as described in the preceding section, the Court may make an order for substituted service, for example, by registered letter or by delivery to the police, amphur, kamnan or poo yai barn or by affixing the summons or other process in a conspicuous place on the door of the dwelling house of the person to whom such summons or other process is directed, or by advertisement, or in such other manner as the Court may see fit.

CHAPTER 11.
Concerning Decrees or Orders.

[8]

71. — When a judgment is pronounced or order made, the Court shall draw up a decree and serve the same forth with. If the parties are in Court the order may be read to them, or the successful party may serve the decree on the other party.

72. — Any decree or order issued by the Court in any case or other proceedings enjoining the payment of money or the performance or discontinuance of any act whatsoever shall limit a period of time within which such order is to be complied with. Such period of time may run from the date of the issue or service of the decree or order or from any other date as the Court in the interests of justice may see fit to order. [22]

73. — Any decree or order issued by the Court enjoining the performance or discontinuance of any act shall state the consequences of non-compliance with such decree or order within the period of time therein mentioned, that is to say, the person receiving and subject to such decree or order shall be liable to distrait of goods or to arrest and imprisonment until compliance with such order.

74. — Any person, not being a party to a suit, who is an applicant for an order or to whom the Court has granted an order, may apply to the Court to order specific compliance with such order in all respects as if he were a party to the suit. If the party enjoined, not being a party to the suit, shall not comply with such order the Court may take all the same steps and use all the same remedies as if such person were a party to the suit.

75. — If any person has become surety by way of bond or otherwise in the presence of the Court for the performance of any judgment or order or of any part thereof, such judgment or order may be used to enforce the execution of such guarantee without the necessity of having to institute a suit against the surety.

CHAPTER 12.
Execution of Goods.

76. — If in any case a party who has obtained judgment shall, at any time within ten years from the date of reading judgment followed by decree, bring to the notice of the Court the fact that the judgment remains unsatisfied, either wholly or in part, the Court shall issue a writ of execution forthwith.

77. — If the plaintiff shall apply for a writ of execution against the property of the party against whom judgment has been given and the Court shall doubt the propriety of seizing such property as aforesaid, the Court may as safeguard in the event of any damage or loss arising by reason of wrongful seizure, order the applicant for such writ as aforesaid to find security. [23]

78. — If the party who has obtained judgment in a suit shall believe that the party against whom judgment has been given has property other than that already known to him, he may ask the Court to summon such latter party and any other person for the purpose of holding an enquiry.

79. — If any party to a suit subject to any order of the Court shall fail to comply with such order and shall evade process of the Court or intend to make a fraudulent disposition of his property, the Court may order the arrest and detention of such party.

80. — If the party against whom judgment has been given shall apply for stay of execution on the ground that he is a plaintiff in the same Court in a case in which the plaintiff who is the applicant for a writ of execution is a defendant and in which judgment has not yet been given the Court may, if it shall think fit under the circumstances, grant the application.

81. — On an application for a writ of execution against property the Court may issue a writ sealed with the seal of the Court and deliver it to the proper officer for execution. The officer executing the writ may seize the property of the party who has failed to pay the amount due under the order of the Court. The Court may order a sale of the property seized by public auction provided always the suitable wearing apparel, bedding and tools of trade of the party whose property is liable to execution to a value of twenty ticals shall be exempt from execution.

82. — After seizure of property as mentioned in the preceding section, the officer may send or deposit the property so seized to such place or with such person as the officer in his discretion shall think fit. After the

expiration of not less than five days the property may be sold by public auction ; provided always perishable property may be sold at once.

83. — The officer executing a writ of execution may seize all notes, [24]
securities and agreements whatsoever of the party whose property is liable to execution which constitute a claim for money on the part of such latter person against other parties or may seize such one or more document or documents as is or are sufficient to satisfy the claim of the party in whose favour judgment has been given and such latter party may sue on such notes or securities for money as aforesaid in the name of the person against whom execution has been issued or other the person entitled to such property so seized as aforesaid.

84. — If the party against whom judgment shall have been given shall not have fully satisfied the judgment of the Court, and the party who has obtained judgment shall on oath state that such former party is entitled to further property from whatever source, then and in such cases the Court may, if satisfied after enquiry that there are in point of fact third parties owing money to the party against whom judgment has been given as aforesaid, order such party to deposit such money so due and owing as aforesaid in Court. If the party ordered to deposit money in Court as aforesaid shall fail to do so in accordance with the order of the Court, the Court may summon such person to the Court for the purpose of holding an inquiry and may make such order as the Court under the circumstances thinks reasonable, for instance, may order the property of such party to be seized and sold by public auction.

85. — If after seizure of property and before sale the party liable to pay shall deposit with the Court the full amount for which execution has been issued together with the fees and expenses of execution, then and in such cases the execution on the property so seized as aforesaid shall be withdrawn.

86 — On an application for a writ of execution against property, only so much property as is necessary to pay the amount due under the judgment together with the costs of the action and the costs of seizure and safe custody of the property taken in execution shall be seized.

87. — The responsibility for the seizure and sale of any property shall [25]
lie with the party asking for the seizure and sale.

88. — If the officer executing the writ of execution shall be doubtful as to the title of the party whose property is to be seized to all or any of such property, he may postpone the seizure or sale of the property the title to which is so doubted as aforesaid and may, if he thinks fit, hold an enquiry into the ownership of such property.

CHAPTER 12. — EXECUTION OF GOODS.

89. — If any person shall allege title to the property seized in execution by the proper officer, than [=then] and in such case an enquiry shall be held and judgment given in accordance with the regulations and conditions hereinafter set out, that is to say: —

1. If the property seized in execution shall be property of a personal nature and the Court of first instance shall adjudge such property so seized in execution as aforesaid to be the property of the party whose property is liable to execution, then and in such cases the Court may order an immediate sale of such property or may postpone the sale pending appeal. In the event of an immediate sale as aforesaid the Court may order the proceeds of sale to be deposited in Court, provided always the Court may order the proceeds of sale to be handed over to the party entitled to them if such party shall find security or shall himself make a written guarantee to the effect that in the event of the decision of the Court of first instance being reversed on appeal, he will deposit with the Court an amount equivalent to the amount so handed over to him.

2. In the case of real property, the Court shall delay making an order of sale until final judgment has been given.

Provided always in the case of either real or personal property, if after final judgment it shall be declared that the party submitting the motion [26] alleging title to the property seized in execution, has no such rights as alleged, the Court may order such party to pay expenses to the party at whose instance execution was issued. No appeal shall lie from the decision of the Court as to such expenses unless they shall exceed fifteen per cent of the claim.

90. — If the proceeds of sale by public auction shall exceed the amount required to satisfy all claims and expenses as mentioned in the preceding section, the excess shall be handed to the owner of the property sold.

91. — If the officer executing the writ of execution shall not seize the property liable to execution at such time as he ought by reason of carelessness or collusion with the party whose property is liable to execution, or neglect to act with all due speed, then and in such cases the party who has suffered damage by such conduct may apply to the Court for relief and the Court if satisfied after enquiry as to the truth of the allegations made, may order the officer so adjudged to be in fault as aforesaid to refund a sum of money equivalent to the amount of property lost, but the sum of money ordered to be refunded as aforesaid shall not

exceed the amount given by the judgment. If such officer shall not refund in accordance with the order of the Court, the Court may issue a writ of execution against his property.

92. — In the case of execution against property or warrant of arrest against any person, such property or person being outside the territorial jurisdiction of the Court issuing such writ or warrant as the case may be, then and in such cases the Court shall send such writ or warrant to the Court within the territorial jurisdiction of which such property or person is for execution, and such latter Court shall execute such writ or warrant in all respects as if it had itself issued such writ or warrant, provided always any property seized or person arrested under such writ or warrant shall be sent to the Court issuing such writ or warrant to be dealt with according to law.

CHAPTER 13. [27]
Commitment for Disobedience.

93. — If any person being within the jurisdiction of any Court shall wilfully disobey any decree or order made against him by such Court, the party in whose favour such decree or order has been made may apply to the Court for an order on such person to appear and show cause why he should not be punished for non-compliance with the decree or order of the Court as aforesaid and the Court, if of opinion that there are no good reasons to the contrary, may grant the order accordingly.

It shall not be obligatory for the Court to make such an order except on evidence sufficient to justify the immediate punishment of a contumacious party who shows no excuse at all for his conduct. The Court shall serve a copy of the evidence on which such order is granted on the contumacious party together with the order, and that party may adduce counter evidence.

94. — If the party ordered to appear and show cause shall not appear on the day appointed and no good reason is brought to the notice of the Court for such failure to appear, the Court, if satisfied after enquiry that the party ordered to appear and show cause as aforesaid has duly received the summons or if such party shall appear but shall fail to show good cause why he should not be punished, may issue a warrant for the immediate arrest and detention of such party.

The Court may adjourn the day fixed for the hearing of the application for the arrest and detention of the party disobeying an order of the Court or the Court may for good reason on the day fixed for the hearing as aforesaid, issue a warrant for the arrest and detention of such party in default as aforesaid such warrant to take effect from such day as the Court thinks fit. If after the expiration of the period limited in such warrant, such party shall still refuse compliance with the order of the Court, he may immediately be arrested and imprisoned under the warrant containing such period of time so elapsed as aforesaid.

95. — The party in custody for refusal to comply with a decree or order [28] of the Court shall be detained in custody until such time as he shall consent to comply with such decree or order in all respects and on such consent and on release from custody in order to comply with such decree or order as aforesaid, shall furnish security to the satisfaction of the Court. Provided always if such party shall still persist in his refusal to comply with such decree or order as aforesaid he shall be indefinitely imprisoned until such time as in the opinion of the Court it is no longer possible for him to comply with such order or until he shall have paid the fine inflicted by the Court according to law.

CHAPTER 14.
Concerning Appeal.

96. — 1. No appeal shall lie from any order or decision made during the trial and before judgment except in the case of an order inflicting fine or imprisonment.

Neither party may give notice of appeal or raise any objections to such order or decision but the Court shall take down in writing such notice of appeal or any objections raised and attach them to the record for the purpose of facilitating the disposal of the case in the Courts of Appeal.

2. Any party may appeal against judgment pronounced in a suit but such appeal shall be entered within one month from the date the judgment is read. Execution may immediately follow judgment, saving always the party appealing may within the period of time limited for appeal ask for a stay or appeal forthwith and in such latter case such appeal shall be held equivalent to an application for a stay of execution.

3. On appeal the parties at issue in the lower Court shall be the parties at issue in the Courts of Appeal and no judge of the Court giving judgment in such case in the first instance may be treated as a defendant. If any party wishes to bring an action against any judge as aforesaid he shall submit a separate and independent action. [29]

4. All applications for a stay of further proceedings pending appeal shall be in writing and may be made at any time after the judgment has been read. Such application may be made in open Court or to any judge in chambers. On such application the Court shall make a written order to the effect as is hereunder stated that is to say : —

(a) In all cases the appellant shall deposit in Court the costs which he has been ordered to pay to the other party According to the judgment and if the Court shall be of opinion that the appeal will necessitate the payment of further costs on the part of such latter party, the Court may in accordance with the scale for the time being in force order the appellant to deposit such further sum as will be sufficient to cover such further costs as aforesaid. The Court shall fix the time within which the appellant shall deposit in Court such sum or sums of money as aforesaid but in no case shall more than ten days be allowed. If the appellant shall not deposit the sum of money as aforesaid in Court within the time allowed, his application for leave to appeal shall be dismissed.

(b) In any case in which the party in whose favour judgment has

been given shall show to the Court that there are good grounds for believing that the appellant will fraudulently dispose of his property during appeal, the Court in addition to the provisions in Clause (a) may order the appellant to make a bond to the effect that he will not dispose of his property pending appeal or the Court in its discretion may order the appellant to find security for the money due under the judgment or the appellant himself may be ordered to deposit in Court the money due under judgment.

If the appellant shall not comply with the order of the Court made under the provisions of this Clause, the Court may order his property to be attached or sold by public auction during the appeal.

5. The appellant shall deliver a copy of the petition on appeal to the Court of first instance for delivery to the respondent. [30]

6. The respondent may within fifteen days from the date of the submission of the appeal submit to the Court which tried the case in the first instance an answer on appeal.

97. — The Court of first instance shall, within seven days from the date of the respondent's submission of an answer on appeal or in case the respondent shall not make an answer on appeal, then within seven days from the expiration of the time within which such answer may be submitted, send all the pleadings and evidence constituting the record together with all exhibits to the Court of Appeal. On appeal the parties may appear in person or by attorney and notice to that effect shall be given to the Court of first instance either at the time of submitting the petition on appeal or the answer thereto. The Court of first instance shall then inform the other side and the Court of Appeal. But if notwithstanding due notice being given as aforesaid either or both sides shall not appear on the day appointed, the Court of Appeal may proceed with the case.

98. — Cases on appeal shall be entered for trial in accordance with the order in which they are received. A notice stating the date appointed for the trial of the case shall be posted up at the Court at least five days before the trial.

99. — After the Court of Appeal shall have examined the record or heard the parties the Court may give judgment in one of the five following ways viz : —

1. Confirm the judgment of the Court below or

2. reverse the judgment of the Court below or

3. vary the judgment of the Court below or

4. take further evidence or

5. order a retrial of the case in any Court.

The Court of Appeal in its judgment shall set out the reasons for its decision and shall send such judgment to the Court below.

100. — If any party to the suit shall be desirous of making a further appeal he may do so, but shall submit to the ordinary rules of procedure regarding appeals provided always in the case of an appeal to the *Dika* Court the *dika* shall be presented within one month from the judgment of the Court of Appeal. [31]

The *dika* shall be presented to the Court of first instance.

101. — The Court of Appeal on giving judgment shall at the same time draw up a decree. If both parties shall have been present whilst such decree has been read out or if after having been duly served with the summons appointing the day for the reading of such decree as aforesaid any one or more of the parties concerned shall not attend, then and in either of such cases such decree shall be considered a good and valid one and may be put in force from the day on which it was read as aforesaid. In the event of the decree being good and valid as aforesaid the party entitled to judgment, may, except where the party against whom judgment has been given presents a *dika* in accordance with this law or duly asks for further time, immediately apply for a writ of execution in accordance with the terms of such decree.

102. — The period of one month allowed for presenting a *dika* dates from the day on which the parties heard or but for their default would have heard the judgment on appeal read. If the party in whose favour judgment has been given in the Court of Appeal is entitled to execution within the period allowed for presentation of a *dika* the party whose property is liable to execution and who is desirous of presenting a *dika* may ask for a stay of execution.

In general, the *dika* and the application for a stay of proceedings in the Appeal Court shall be made to the Court of first instance which tried and gave judgment originally. Provided always under special circumstances leave may be granted to make such *dika* or application to another Court.

103. — If the party who has duly deposited security for costs shall appeal from the judgment of the Court of first instance and shall in the event of losing the case on appeal be desirous of entering a *dika* he shall be required to deposit a further sum as security for costs the same in all respects as required on appeal to the Appeal Court. The Court of first [32]

instance shall not send such *dika* to the *Dika* Court until deposit of security for costs as aforesaid. In the event of the judgment of the Court of first instance being reversed in any material particular, it shall not be incumbent on the party presenting a *dika* to deposit security for costs and the party who has already deposited security for costs on entering his appeal may ask for its withdrawal.

104. — If either party shall be desirous of entering an appeal or a *dika* but the Court below shall first require the performance of any act which such party knows is beyond his ability to perform, such party may submit a motion to the Court of Appeal but in no case shall a petition on appeal or *dika* be entered.

105. — (Section repealed by the Dika Appeal Act 2457, which has been repealed itself by the Dika Appeal Act 2461).

106. — (Idem).

107. — (Idem).

CHAPTER 15.
Concerning Arbitrators.

108. — If both the plaintiff and the defendant in any pending case shall apply to the Court to refer the case to an arbitrator or arbitrators the Court may grant the application accordingly.

109. — If on the application of the plaintiff or the defendant as mentioned in the preceding section, the Court shall be of opinion that a summons calling on any arbitrator agreed on by the plaintiff and defendant to undertake the arbitration of the case cannot appropriately be issued or if the arbitrator after receiving the summons shall not be willing to undertake the arbitration, the plaintiff and defendant may apply to the Court that some other person be appointed as arbitrator.

110. — If in the case of arbitration by more than one arbitrator the opinion of the arbitrators shall be equally divided, the arbitrators may appoint an umpire for the purpose of determining the points in dispute by a majority. The opinion of the majority shall be considered final. If the arbitrators cannot agree on an umpire the Court shall appoint an umpire. [33]

111. — If the arbitrators shall require any of the pleadings or other papers which have been before the Court or the attendance of any witnesses, the Court shall, within the limits of its jurisdiction, comply with the request of the arbitrators.

112. — When the arbitrators shall have given their opinion as to the merits of the case submitted to them for arbitration, the Court shall give judgment in accordance with that award.

Payment of costs and arbitration fees shall depend on any agreement the parties may have made. If no such agreement shall have been made, payment of such fees shall be within the discretion of the Court.

113. — If any parties at issue have voluntarily submitted their differences to arbitration out of Court and the arbitrators have duly given their award in accordance with the terms of submission, and any party refuses to abide by the award so given, the party wishing to enforce the award may apply to have the award adopted by the Court in the same manner in all respects as in a case where the arbitrators have been appointed in Court as hereinbefore mentioned.

114. — When the Court shall have given judgment in accordance with the award of the arbitrators neither side shall have any right of appeal

except with the leave of the Court in the following cases, that is to say, when there is evidence to show dishonesty on the part of the arbitrators or umpire or that the award is fraudulent or that the judgment of the Court is not in accordance with the award of the arbitrators.

When there is no right of appeal as in this section mentioned it shall not be necessary for the Court to send the record to the Appeal Court and the Court may order compliance with the judgment at once.

CHAPTER 16.
Suits *in Formâ Pauperis.*

[34]

115. — In any case where the plaintiff alleges that by reason of poverty he is unable to pay the Court fees the Court, on being satisfied after inquiry that the plaintiff is in fact a pauper and has a good cause of action, shall allow such plaintiff to sue *in formâ pauperis*.

116. — In any case against a defendant who alleges that by reason of poverty he is unable to pay the Court fees, the Court, on being satisfied after inquiry that the defendant is in fact a pauper without sufficient property to pay the Court fees, shall likewise allow such defendant to defend the case *in formâ pauperis*.

117. — Any person desirous of either instituting or defending an action *in formâ pauperis* shall apply to the Court and make a sworn statement showing that he has not sufficient property to pay the Court fees. No party without first obtaining the permission of the Court can either institute or defend an action *in formâ pauperis*.

After the Court shall have taken down in writing the sworn statement of the person desirous of instituting or defending an action *in formâ pauperis*, the Court shall serve a copy of such statement on the other side together with the application to sue or defend *in formâ pauperis*.

118. — Any person who has been authorised by the Court to institute or defend an action *in formâ pauperis* shall not be liable to pay Court fees.

119. — If the Court shall have authorised any person to institute or defend any action *in formâ pauperis* and afterwards it is found that such person so suing or defending *in formâ pauperis* as aforesaid has sufficient property to pay the Court fees, whether such property shall have been in existence at the time of the application to sue *in formâ pauperis* or shall have accrued afterwards or if the party so suing or defending *in formâ pauperis* as aforesaid shall be successful and the Court shall have ordered the other side against or by whom the action is brought to pay the Court fees, then and in such cases the Court shall order the costs to be paid in full.

[35]

120. — If any person who has received permission from the Court either to institute or defend an action *in formâ pauperis* shall behave in an improper manner, such as for instance by vexatious proceedings, by committing contempt of Court or by intentionally delaying the case, the Court may at any time revoke the permission to proceed with such case *in*

formâ pauperis.

121. — In any case in which a plaintiff has received permission from the Court to sue *in formâ pauperis* and it is proved to the Court that such plaintiff has intentionally brought a false action, the Court may sentence such plaintiff to a term of imprisonment not exceeding six months.

122. — If it shall be proved that any person who with the object of either instituting or defending an action *in formâ pauperis* shall make a false statement to the Court on oath, such person shall be held to have committed a contempt of Court and shall be liable to a term of imprisonment not exceeding twelve months or to a fine not exceeding one thousand ticals.

CHAPTER 17.
Appointment of Attorneys.

123. — The plaintiff or defendant may appoint one or more attorney or attorneys to represent him or them in any Court but the Court may, for the purpose of facilitating the hearing of the case or in the interests of justice, order the parties themselves to attend the Court in person.

124. — In any case in which there is more than one plaintiff or more than one defendant, each plaintiff or defendant, as the case may be, may appoint a separate attorney to represent him or all or any of them may appoint a single attorney to represent all or any of them as the case may be, provided always an attorney may not appear both for a plaintiff or plaintiffs and a defendant or defendants at one and the same time. [36]

125. — The written appointment of an attorney whether for plaintiff or defendant may be given by any Court or by any official before whom written contracts may be made. If such appointment is made at the Court or other place than the Court trying the case, the person appointed shall take the written appointment to the Court trying the case. The contents of the document appointing an attorney shall be distinct and free from ambiguity.

126. — If any party shall be an infant or of unsound mind incapable of personally appointing an attorney, the Court shall summon the father or mother or relations or other guardian of such party for the purpose of making inquiries and shall appoint a fit person as attorney having regard to the requirements of the case.

127. — (Section repealed by the Decree regulating the practice of advocates of the year 2457).

128. — (Idem).

CHAPTER 18.
Death of Parties before Judgment.

129. — If a party in a civil case shall die at any time before judgment, the other side having an interest in such case may apply to the Court to summon the heirs or administrator or other person having the custody of the estate of the deceased to appear in the further hearing of the case or the Court may summon any other person to appear in the stead of the deceased.

130. — Application for the substitution of heirs or administrator or other the person having the custody of the estate of the deceased shall be made within one year from the death of the deceased.

If the Court in its discretion shall see fit to grant such application, the Court shall issue a summons requiring such person to proceed with the case in the stead of the deceased. The summons for service on such person as aforesaid shall set out in brief the contents of the motion upon which such summons has been granted.

131. — Any person receiving such summons as in the preceding section mentioned may plead in bar thereof that he is not the heir, administrator or person having custody of the estate of the deceased, provided always such plea shall be raised within the time limited by the Court. [37]

132. — If the person receiving the summons of the Court requiring him to appear in the stead of the deceased shall on motion raise the contention that he is not the right person to appear in the case in the stead of the deceased and the Court after inquiry is of opinion that such person is not connected with the estate of the deceased the Court shall dismiss the motion of the party asking for the substitution of such person as aforesaid.

133. — Any person appearing in the stead of the deceased may appear in person or by attorney but the provisions of Chapter 16 shall be complied with in all respects.

CHAPTER 19.
Contempt of Court.

134. — In any case in which it shall be necessary in order to preserve the order of the Court to eject any party from the Court on the ground of unseemly behaviour, the Court may proceed with the case in the absence of such party.

135. — If any person intending a fraud shall appear as attorney either for the plaintiff or defendant without receiving authority from the plaintiff or defendant as the case may be, such person shall be liable to a term of imprisonment not exceeding twelve months or to a fine not exceeding one thousand ticals or both.

136. — Any person insulting a judge while performing his duties in Court or insulting any Court whether by conduct or words, shall be liable to a term of imprisonment not exceeding twelve months or to a fine not exceeding one thousand ticals or both.

137. — If any person shall commit a contempt of Court as described in the preceding section, the Court may order the arrest and detention of such person or his exclusion from the Court for any length of time. The Court may, in its discretion, give judgment on the same day. The Court shall attach to the record a report setting out the nature of the offence committed and the punishment a warded. [38]

CHAPTER 20.
Concerning Time.

138. — All periods of time, which by the terms of this Royal Decree are to be computed from any given day or any given event, shall be calculated as from the first day next after such given day or. Event.

139. — If the last day of any period of time limited by the Court or the last day of the period of time allowed by law for instituting an action shall expire on a day on which the Court is closed, then and in any such case either of such periods of time as aforesaid shall be considered as expiring on the first day on which the Court re-opens.

140. — Nothing in this Royal Decree contained shall in any way affect the right of the Court to extend or limit the time allowed for the doing of any act, that is to say, the Court has, under special circumstances, the right to fix such period of time for the doing of any act as the Court shall think fit ; provided always, in ordinary circumstances the Court shall observe the periods of time in this Royal Decree limited and contained. If the Court shall fix any special period of time for the doing of any act as aforesaid, a note of it shall be made and added to the record.

CHAPTER 21.
Concerning Fees.

141. — Judgment as to costs shall be in the discretion of the Court. If no particular costs are specified, the word shall be understood to include the witnesses' fees, attorney's fees and all other fees payable by law.

142. — All Court fees whatsoever whether in cases purely civil or in cases both civil and criminal shall be assessed in accordance with the under mentioned scale. [39]

If and whenever such "scale shall be found to be deficient in any particular, the Minister of Justice may issue a departmental regulation for the purpose of remedying such defects so found as aforesaid.

143. — The fees to be paid on the entry of the plaint shall be assessed at the rate two and a half per cent on the value of the property claimed. Any fraction of a hundred shall be considered as a hundred. Provided always no fee to be paid on the entry of a plaint shall exceed one thousand ticals.

144. — If the plaint shall claim relief which has no capitalised value such as, for instance, relief by way of divorce, by way of injunction or in respect to rights of way, the fee on entry of each such claim shall be ten ticals. Provided always if such plaint shall also relate to a claim having a capitalised value, then and in such cases fees shall be payable in accordance with the scale as aforesaid, but so that no sum less than ten ticals shall be payable.

Any case relating to a claim having no capitalised value as aforesaid may be appealed up to the *Dika* Court.

145. — The fees to be paid on the entry of a plaint claiming enforcement of an award shall be assessed at the rate of one per cent.

SCHEDULE I.

Fees.	Appeal Court	Courts in the Ministry of Justice and Monthon Courts.	Muang Courts.	Magistrates and Kweng Courts.	Remarks.
(1) On each judgment	20 ticals	10 ticals	8 ticals	4 ticals	
(2) On receipt of plaint	8 ticals	6 ticals	4 ticals	1 tical	
(3) On appointment of attorney	8 ticals	6 ticals	4 ticals	2 ticals	
(4) On bail bond	8 ticals	6 ticals	4 ticals	2 ticals	
(5) On summons of whatever kind	2 ticals	1.50 ticals	1 tical	50 stgs.	The applicant must also pay costs of services.
(6) On every motion in writing and on every affidavit accompanying such motion as aforesaid	8 ticals	6 ticals	4 ticals	1 tical	
(7) On every affidavit or other document to be used as evidence					
Except receipts of payments of taxes, the fee for each set of which shall not exceed	2 ticals 8 ticals	1.50 ticals 6 ticals	1 tical 4 ticals	 2 ticals	
(8) On every decree or order	8 ticals	6 ticals	4 ticals	2 ticals	The applicant must also pay costs of services.
(9) Copy of Records if made by the party to be free of cost. If made by the Court at the rate of 1 tical for the first 100 words and 25 satangs for every subsequent 100. Certifying correctness 2 ticals each document					
(10) On an instrument containing terms of compromise	8 ticals	8 ticals	4 ticals	2 ticals	

N. B. — If a case within the powers of a Muang Court is tried in a Monthon Court the fees of a Muang Court shall be levied.

SCHEDULE II.

The different grades of witnesses entitled to allowances for attendance at Court.	ALLOWANCE PER DAY.		Remarks.
	Not exceeding ticals.	Not less than ticals.	
Members of the Royal Family and Government officials of high degree	20	Such amount as the Court shall think fit.	In addition every witness is entitled to reasonable traveling expenses actually incurred. The allowances in the scale are to be granted for each day the witness is obliged to come to Court, whether his evidence is taken or not.
Officials of lesser degree	10	„ „	
Doctors and members of other learned professions	15	„ „	
Heads of firms not in receipt of a monthly salary	15	„ „	
Persons of all other descriptions shall receive such sum as is equivalent to the sum they would have earned per day during the days they are compelled to attend the Court.	10		
Allowances for expert witnesses and arbitrators shall be agreed upon by the parties themselves			
Interpreter's fee to be paid by the losing party to the successful party			
European interpreter per day	20		
Asiatic interpreter per day	6		

In the case of the Court proceeding to take the evidence of witnesses, traveling expenses and allowances shall be paid in accordance with the following scale viz: —

Judges — per day ..... 20 ticals
Registrars and other officials ..... 10 ,,
Witnesses shall receive no allowance.

FEES TO BE PAID ON EVIDENCE TAKEN ON

COMMISSION.

If such issues shall be sent to any Court other than the Court in which the plaint is issued, fees shall be paid in accordance with the following scale viz : —

If the amount of the claim	is less than 10,000 ticals,	5	Ticals.
,, ,, ,, ,,	is 10,000 ticals and upwards,	10	,,
,, ,, ,, ,,	Is 40,000 ,, ,, ,,	25	,,

SCHEDULE III.

Sheriff's Fees.

Fees.	Amount.
Sales by auction	5 per cent.
Sales by assessment	2 per cent.
Sale by auction (when notice of sale issued but judgment money paid before sale)	3 ½ per cent.
Measuring land and preparing plan	8 ticals per day

Scale of fees allowable to attorneys under the provisions of the Royal Decree of the year 123 concerning attorneys' fees and the proclamation of the year 126 extending and amending the same.

	Amount in dispute not exceeding 160 ticals.	Amount in dispute exceeding 160 ticals but not exceeding 400 ticals.	Amount in dispute exceeding 400 ticals but not exceeding 1,000 ticals.	Amount in dispute exceeding 1,000 ticals but not exceeding 2,000 ticals.	Amount in dispute exceeding 2,000 ticals but not exceeding 5,000 ticals.	Amount in dispute exceeding 5,000 ticals.
In Court of first instance — Minimum fee	Such amount as the Court shall in its discretion think fit, not exceeding 25 ticals.	25	50	100	150	Such sum as the Court in its discretion shall think fit, not exceeding ten per cent of the amount in dispute.
In Court of first instance — Ordinary fee		50	100	200	300	
In Court of first instance — Maximum fee	...	100	200	300	450	
In the Court of Appeal	...	25	25	50	100	Such sum as the Court in its discretion shall think fit, not exceeding 400 ticals.
In the *Dika* Court	...	...	50	100	200	Such sum as the Court in its discretion shall think fit, not exceeding 800 ticals.

Half this scale to be allowed in cases occurring in the Provinces.

THE BANKRUPTCY ACT.

CONTENTS.

Bankruptcy Act of the Year R.S. 130. [1]

BY THE KING'S MOST EXCELLENT MAJESTY.

WHEREAS it has been thought expedient for the security of commerce to extend and improve the bankruptcy law of the Country,

It is hereby enacted :

PRELIMINARY.

1. — This law shall be called The BANKRUPTCY ACT R. S. 130.

2. — It shall come into force on November 30th, R. S. 130.

3. — On and from the day of operation of this Act the following Laws and the Regulations issued thereunder shall be repealed :

(1) The Debtors Act, R. S. 110.

(2) The Bankruptcy Act, R. S. 127.

4. — (1) The Minister of Justice shall appoint such person or persons as he may think fit by name or office to be official receivers of bankrupts' estates and may remove any person so appointed from such office. The official receivers shall be officers of the Court. They are officials within the meaning of the Penal Code.

(2) — The Minister of Justice may from time to time appoint by name or office such other officers, either temporary or permanent, as he may think necessary for carrying into effect the provisions of this Act and may assign to them such duties as he may think fit and may remove any such officer from office.

5. — This Act shall apply to the Monthon of Bangkok only but its provisions may be extended to such other Monthons as shall from time to time be specified by notification issued in the *Government Gazette*. [2]

6. — In this Act, unless the context otherwise requires :

"Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution ;

"Special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the re solution ;

"Petitioning Creditor" includes any other creditor appointed under Section 10 of this Act ;

"Secured Creditor" means a person holding a mortgage charge or lien on the property of the bankrupt, or any part thereof, as a security for a debt due to him from the bankrupt;

"Sheriff" includes any officer charged with the execution of a writ or other process;

"Bankruptcy proceedings" include all proceedings before the Court or before the official receiver from presentation of petition to discharge :

Bankruptcy proceedings are judicial proceedings within the meaning of the Penal Code and of the Law of Civil Procedure.

"Bankrupt" includes any Promoter, Director, Managing Director or employe[e] of a bankrupt Company, provided always that the responsibility of such Promoter, Director, Managing Director or employe[e] shall extend only to acts done or omissions made by him while actually engaged in the promotion or service of the Company

PART 1.
PROCEEDINGS FROM PRESENTATION OF PETITION TO DISCHARGE.

[3]

7. — Any creditor who has a liquidated claim of or exceeding Tcs. [=Ticals] 1,000 or any two or more creditors the aggregate amount of whose liquidated claims amounts to Tcs. 1,000 may petition the Court praying that, as the debtor has suspended payment, he may be adjudged bankrupt.

8. — If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, in the same manner as if he were an unsecured creditor.

9. — (1) A bankruptcy petition shall be verified by affidavit of the creditor, or of some person on his behalf having personal knowledge of the facts therein contained :

(2) On the presentation of a petition the Court shall appoint a day and time for the hearing thereof and shall cause at least seven days notice of the same to be served on the debtor together with a copy of the petition.

10. — (1) The petitioning creditor shall upon presentation of a bankruptcy petition deposit with the Court the sum of Ticals 50 and shall take active interest in the conduct of the bankruptcy proceedings, and he shall assist the official receiver to the best of his ability in the realisation of the bankrupt's estate. The petitioning creditor shall be liable for all costs, damages and expenses incurred in bankruptcy proceedings. The official receiver may at any time call upon the petitioning creditor to make such further deposit as the official receiver may think necessary to guarantee him against any loss.

[4]

(2) Should the petitioning creditor refuse or neglect to assist the official receiver in the conduct of the bankruptcy proceedings or to pay a deposit as provided for by this section within seven days from receipt of a notice from the official receiver to that effect, the official receiver may, subject to the provisions of this section, appoint any creditor able and willing to act to take charge of the proceedings. Prior to his appointment such creditor shall deposit security to the satisfaction of the official receiver whereupon he shall be treated in all respects as if he were the petitioning creditor and be entitled to the costs provided for by Section 57.

(3) The creditors may at any meeting by an ordinary resolution

appoint any one of their number able and willing to act to take charge of the proceedings in place of the petitioning creditor or other creditor appointed by the official receiver. Prior to his appointment such creditor shall deposit security to the satisfaction of the official receiver, whereupon he shall be treated in all respects as if he were the petitioning creditor and be entitled to the costs provided for by Section 57.

(4) Should the petitioning creditor refuse or neglect to act in the manner stated in this section, and should no other creditor be able and willing to undertake the duties therein stated, within one one month from the date of such refusal or neglect by the petitioning creditor as aforesaid the official receiver may report the same to the Court whereupon the Court may annul the bankruptcy or make such other order as the Court may think fit.

11. — (1) The Court shall on the application of the petitioning creditor, and subject to the deposit of such security as the Court may think fit, at any time after the presentation of a bankruptcy petition, and before a bankruptcy order is made, appoint the official receiver to be interim receiver of the property of the debtor, and direct him to take immediate possession thereof.

(2) Where an interim receiver has been appointed before the making of a bankruptcy order the date of such appointment shall for the purposes of this Act be deemed to be the date of the bankruptcy order.

12. — (1) Any creditor of the deceased debtor whose debt would have [5]
been sufficient to support a bankruptcy petition against such debtor, had he been alive, may, within six months from date of death present to the Court a petition praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

The Court shall order service to be made on the heirs or administrator or other person having the custody of the estate of the deceased.

(2) The Court shall hold an inquiry and, if satisfied that the estate of the deceased is insolvent, shall make an order of bankruptcy against the estate of the deceased, and the liquidation of the estate shall be carried out according to the provisions of this Act as far as is possible under the circumstances.

13. — (1) At the hearing of the petition the Court shall require proof of :

(a) The debt of the petitioning creditor.

(b) Suspension of payment by the debtor.

(c) The service of the petition.

(2) If satisfied with the proof the Court shall adjudge the debtor bankrupt.

(3) If the Court is not satisfied with the proof of the matters above mentioned or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition and annul the interim receiving order, if any.

(4) If the Court is satisfied by the debtor that the causes of his suspension of payment are temporary and that there is a reasonable probability of his being able to pay bis debts in full, it may give the debtor a respite for a period not exceeding one year, upon such terms as the Court may think fit.

(5) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such amount as would justify the petitioner in presenting a petition against him, the Court may on such security if any being given by or on behalf of the debtor as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt. [6]

(6) Where proceedings are stayed, the Court may adjudge the debtor bankrupt on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks fit, the petition in which proceedings have been stayed as aforesaid.

(7) A bankruptcy petition shall not after presentation be withdrawn without the leave of the Court.

14. — During the period which extends from the making of the interim receiving order or bankruptcy order up to the annulment of such order or to the end of the bankruptcy proceedings, the following rules apply:

1.— All the property of the bankrupt is vested in the official receiver, including any property which may accrue to the bankrupt by inheritance, gift, or otherwise ;

2.— The official receiver is the only person who may legally deal with the property of the bankrupt and who may legally receive any money or other property due to the bankrupt;

3.— The official receiver is entitled to collect any monies or other properties due to the bankrupt by any banker, treasurer, attorney or agent or by any other person. He is entitled to compromise claims, to bring or defend any action relating to the property of the bankrupt and to do any such act as may be necessary for a beneficial settlement of the affairs of the

bankrupt;

4.— The official receiver is substituted to the bankrupt in all pending action in which the bankrupt is a plaintiff, defendant or intervener, and which relate to the property of the bankrupt; [7]

5.— Creditors to whom the bankrupt is indebted in respect of any debt provable in bankruptcy have no other remedy against the property or person of the bankrupt than the remedies described in this Act;

6.— All acts done by the bankrupt in respect to his property or affairs are invalid, except acts done under the directions of a meeting of creditors or of the official receiver, as provided in sections 23 and 38.

15. — On bankruptcy order being made, the bankrupt shall within twenty-four hours after service of the same, file an affidavit in the office of the official receiver containing a true and correct statement of the names and residences of all the partners, if any, in his business. If the debtor alleges he has no partners, he shall within the time before specified file an affidavit to that effect. Such statement shall for the purposes of this Act be deemed to be part of the debtor's statement of his affairs referred to in section 20 hereof.

16. — On an interim receiving order or bankruptcy order being made, the interim receiver or official receiver shall forthwith take possession of any property, seals, books or documents of the bankrupt being in possession of the bankrupt or of any third person.

The interim receiving order or bankruptcy order is equivalent to a warrant of the Court ordering any property, seals, books or documents of the bankrupt being in possession of the bankrupt or of any third person to be seized and delivered to the interim receiver or official receiver.

17. — In any of the undermentioned cases, the Court may, on or after granting an interim receiving order or bankruptcy order, order the debtor to be arrested and detained until he shall give security to the satisfaction of the Court, or until such time as the Court may think fit : —

a. If it appears to the Court that there is probable cause for believing that the debtor has absconded or is about to abscond with a view of avoiding, delaying or embarrassing proceedings in bankruptcy against him. [8]

b. If it appears to the Court that there is probable cause for believing that the debtor has committed or is about to commit any of the offences punishable under this Act.

Provided that the debtor before or at the time of his arrest is served with a copy of the bankruptcy petition.

The cost of maintaining any person in prison under this section shall be prepaid by the applicant from time to time to the official re-receiver on behalf of the gaol authority.

18. — (1) The official receiver shall upon receiving notice of his appointment insert a notice of the interim receiving order or bankruptcy order in the *Government Gazette*, and advertise the same in such local papers as he may think necessary.

(2) The notice of a bankruptcy order shall specify that the creditors of the bankrupt must apply for payment to the official receiver within two months.

19. — The bankrupt shall, on being notified of a bankruptcy order or interim receiving order, deliver to the official receiver or interim receiver all his property, together with the seals, books and other documents in his possession relating to his property or affairs.

20. — The bankrupt shall, within seven days from the date of service of the bankruptcy order or such further time as the official receiver may allow, make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by an affidavit, and showing the cause of the bankrupt's insolvency, full particulars of assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as the official receiver may require.

21. — (1) As soon as may be after the making of a bankruptcy order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of the creditors) shall be held for the purpose of considering whether a proposal for a composition shall be entertained, and generally as to the mode of dealing with the bankrupt's property. [9]

(2) The official receiver shall give to the creditors seven days notice of the first and all subsequent meetings of creditors.

(3) Every debtor against whom a bankruptcy order is made shall attend the first and all subsequent meetings of his creditors, and shall submit to such examination and give such information as the meeting may require.

22. — (1) A creditor may vote at meeting of creditors either in person or by proxy.

(2) No creditor or any person acting under a proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or principal, in a position to receive any remuneration out of the estate of the bankrupt otherwise than as a creditor rateably with the other creditors of the bankrupt.

23. — The creditors may by ordinary resolution at any meeting appoint any person or persons (including the bankrupt) manager or managers of the bankrupt's estate with such powers as may be entrusted to him or them by the official receiver.

(1) The manager or managers shall give security and account in such manner as the official receiver may direct.

(2) The manager or managers may receive such remuneration (if any) as the creditors by an ordinary resolution at any meeting may determine, or in default of any such resolution as the official receiver may determine.

24. — (1) As soon as conveniently may be after the conclusion of the first meeting of the creditors, the bankrupt shall be examined by the Court as to his conduct, dealings and property.

(2) The official receiver shall give seven days notice to the bankrupt and creditors of the date fixed for the public examination of the bankrupt. [10]

(3) Any creditor who has tendered a proof, or his representative authorized in writing, may question the bankrupt concerning his affairs, and the causes of his failure.

(4) The official receiver shall take part in the examination of the bankrupt; and for the purpose thereof may employ a solicitor or attorney.

(5) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Notes of the examination shall be taken down in writing, and read over to and signed by the bankrupt, and may thereafter be used in evidence against him. A certified copy thereof shall be sent by the Court to the official receiver,

(6) When the Court is of opinion that the affairs of the bankrupt have been sufficiently investigated, it shall by order declare that his examination is concluded; but such order shall not preclude the Court from directing a further examination of the bankrupt as to bis conduct, dealings and property whenever it thinks fit to do so.

25. — Where the bankrupt is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him

unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the bankrupt be examined on such terms, in such manner and at such place as to the Court seems expedient.

26. — (1) Where it is proved to the satisfaction of the Court that the debts of the bankrupt have been paid in full the Court shall annul the bankruptcy and make such order as to the payment of the costs of the bankruptcy proceedings as it may think fit.

(2) Where a bankruptcy is annulled under this section all acts thereunder duly done by the official receiver or other person acting under his authority or by the Court shall be valid but the property of the debtor who was adjudged bankrupt shall revert to the debtor. [11]

(3)The official receiver shall cause notice of the order annulling a bankruptcy to be inserted in the *Government Gazette* and published in at least one local paper,

(4)For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond with such sureties as the Court approves to pay the amount of the debt with costs.

Any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

27. — (1) A bankrupt may at any time after the conclusion of his public examination, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application in open Court

(2) Prior to the application for his order of discharge the bankrupt shall deposit with the official receiver such sum not exceeding 50 ticals as the Official Receiver may consider necessary to cover the costs and expenses of and incidental to the application for discharge.

(3) The official receiver shall send fourteen days notice of the date of the hearing of the application for discharge to each creditor who has proved, and advertise the same in the *Government Gazette* and at least one local paper, and the Court may hear the official receiver, and any creditor or his representative. At the hearing the Court may examine the bankrupt on oath and receive such evidence as it may think fit.

(4) On the hearing of the application the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs prior to and during his bankruptcy, and may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time or grant an order of discharge subject to any condition the Court may think fit. Provided that the Court shall refuse the discharge in all cases where the bankrupt has committed any offence under this Act, unless for special reasons the Court otherwise determines, [12]

and shall, on proof of any of the facts mentioned in (5), either

(a) refuse the discharge ; or

(b) suspend the discharge for a period of not less than two years; or

(c) suspend the discharge until a dividend of not less than fifty per cent has been paid to the creditors; or

(d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts.

Provided, that if at any time after the expiration of two years from the date of any order made under the section the bankrupt shall satisfy the Court that he is unable to comply with the terms of such order, the Court may modify the terms of the order in such manner and upon such conditions as it may think fit.

(5) The facts referred to in (4) are: —

(a) That the bankrupt's assets are not of the value equal to fifty per cent of the amount of his unsecured liabilities, unless he satisfies the Court that the reason for the same has arisen from circumstances for which he cannot justly be held responsible ;

(b) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy ; [13]

(c) That the bankrupt has continued to trade after knowing himself to be insolvent ;

(d) That the bankrupt has contracted any debt provable in the

bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it ;

(e) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) That the bankrupt has brought on, or contributed to, his bankruptcy by rash or hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs ;

(g) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him ;

(h) That the bankrupt has within three months preceding the date of the bankruptcy petition incurred unjustifiable expense by bringing a frivolous or vexatious action ;

(i) That the bankrupt has within three months preceding the date of the bankruptcy petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors;.

(j) That the bankrupt has within three months preceding the date of the bankruptcy petition incurred liabilities with a view of making his assets equal to fifty per cent of the amount of his unsecured liabilities;

(k) That the bankrupt has on any previous occasion been adjudged bankrupt or made a composition with his creditors :

(1) That the bankrupt has been guilty of any fraud; [14]

(m) That the bankrupt has within three months immediately preceding the date of the bankruptcy petition sent goods out of the jurisdiction of the Court under circumstances which afford reasonable grounds for believing that the transaction was not a *bona fide* commercial transaction.

28.— For the purposes of the preceding section the following presumptions shall be made : —

(a) If at any time after the expiration of six months from the date of the bankruptcy order the official receiver reports to the Court that the value of the assets realised together with the estimated value of the assets realisable is insufficient to pay a dividend of fifty per cent on the debts proved in the bankruptcy, it shall be presumed (until the contrary be proved) that the bankrupt has continued to trade after knowing or having reason to believe himself to be insolvent ;

(b) In determining whether a bankrupt was or knew or had reason to believe himself to be insolvent at any particular date every debt owing to him by any person resident out of the jurisdiction which debt had been at such date due for more than twelve months shall be excluded from the computation of the value of the assets and for the purpose of such computation shall be deemed not to be an asset.

(c) A bankrupt shall be deemed to have continued to trade after knowing or having reason to believe himself to be insolvent if, having continued to trade after he was in fact insolvent:

(I) he is unable to satisfy the Court that he had reasonable ground for believing himself to be solvent; or

(II) he fails without reasonable excuse (proof whereof shall lie on him) to produce a proper balance sheet for each of the three years immediately preceding the bankruptcy: every such balance-sheet being made within a reasonable time after the expiration of the year to which it relates and showing the true state of his affairs at the end of such year. [15]

(d) Any preference given by the bankrupt to any creditor within the three months immediately preceding the date of the bankruptcy petition shall (until the contrary be proved) be deemed to be undue.

29. — (1) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the official receiver may require in the realization and distribution of such of his property as is vested in the official receiver and if he fails to do so he shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any thing duly done subsequent to the discharge, but

before its revocation.

(2) An order of discharge shall not release the bankrupt from any debt on a recognizance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or on a bail bond entered into for the appearance of any person prosecuted for any such offence, unless the Ministry of Finance certify in writing their consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability not provable in bankruptcy or any debt or liability incurred by means of any fraud nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(4) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge and may give this Act and the special matter in evidence. [16]

(5) An order of discharge shall not release any person who at the date of the bankruptcy petition was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

30. — (1) Where a bankrupt has not obtained his discharge the following consequences shall ensue: —

(a) The bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction in writing of the official receiver.

(b) The bankrupt shall once in every six months render to the official receiver an account of all money and property which have come to his hands for his own use during the preceding six months and shall pay and make over to the official receiver so much of the same moneys and property as shall not have been expended by him with the consent of the official receiver in the necessary expenses of maintenance of himself and his family.

(c) The bankrupt shall not leave the jurisdiction of the Court without the previous permission in writing of the official

receiver or of the Court.

(2) The bankrupt who makes default in performing or observing any of the provisions of this section shall be deemed guilty of an offence under this Act and shall be liable to imprisonment not exceeding three months.

31. — (1) When the official receiver has realised all the property of the bankrupt or so much thereof as can in his opinion be realised without needlessly protracting the proceedings in bankruptcy and has distributed a final dividend (if any) or has ceased to act by reason of a composition having been approved, he shall file a report to the Court containing an account of all monies of the bankrupt received and expended by him and praying to be released from his duties as official receiver. The Court shall either grant or withhold the release accordingly. [17]

(2) Where the release is withheld the Court may save as is hereinbefore provided on the application of a creditor or any person interested make such order as it thinks just charging the official receiver with the consequences of any act done or default made by him contrary to his duties.

(3) Any order of the Court releasing the official receiver shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as official receiver.

32. — Any creditor of a bankrupt may inspect at all reasonable times personally or by agent any books, papers or documents of the bankruptcy in the possession of the official receiver, and take any copy thereof.

33. — Notice of the first meeting of creditors shall be given in writing by the official receiver to each creditor known to him, and advertised in a local paper.

Other notices to creditors may be given by letter or by advertisement in a local paper, as the official receiver may think fit.

PART II.
BANKRUPTCY PROCEEDINGS AGAINST PARTNERSHIPS.

34. — Whenever a bankruptcy petition is made against a partnership, an interim receiver shall be appointed for the property of the persons who are designated in the petition as being partners in such partnership, provided there be prima facie evidence that they are partners.

The Court may subject the appointment of an interim receiver for the property of a separate partner to the deposit by the petitioning creditor of such security as the Court may think fit for covering eventual compensation. [18]

Should it be found afterwards that the person for whose property an interim receiver was appointed was not a partner in the partnership, the Court shall withdraw the appointment. If the said person has suffered any injury by reason of the appointment of the interim receiver the Court may grant him compensation for such injury, to be paid by the petitioning creditor, or out of the estate of the bankrupt, as the Court shall direct.

35. — When a bankruptcy order is made against a partnership in the partnership name, the Court shall at that time or on a subsequent motion of the petitioning creditor, or on application of the official receiver, adjudge bankrupt as a member of the partnership any person who is proved to the satisfaction of the Court to be a partner.

36. — If the partnership is registered, a certified copy of the list of partners delivered by the proper Registrar shall be conclusive evidence that a person is a partner in such partnership.

37. — If the partnership is a limited one, no partners with limited liability may be declared bankrupt unless it is proved to the satisfaction of the Court that such partner has not paid his contribution in full.

PART III.
REALISATION OF ASSETS.

38. — (1) The bankrupt shall wait at such times on the official receiver, or manager, and generally do all such acts in relation to his property and the distribution of the proceeds amongst his creditors, as may be required by the official receiver, or manager, or may be prescribed by general rules, or be directed by the Court by any Special order made in reference to any particular case.

(2) He shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds amongst his creditors and amongst other things shall be bound if required by the official receiver so to do to answer all such questions and to submit to such medical examination and to do all such other things as may be necessary for the purpose of effecting an insurance on his life. [19]

39. — (1) The Court may, on the application of the official receiver or the official receiver may at any time after a bankruptcy order has been made against a debtor, summon before it or him and examine the bankrupt or his wife, or any person known or suspected to have in his possession any property belonging to the bankrupt, or any person whom the Court, or the official receiver may deem capable of giving information respecting the bankrupt, his dealings or property, and the Court or the official receiver may require any such person to produce any document in his custody or power relating to the bankrupt , his dealings or property.

(2) If any person on examination before the Court or by the official receiver admits that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the official receiver, order him to deliver such property to the official receiver.

40. — (1) The official receiver shall as soon as may be after a bankruptcy order has been made against a debtor prepare and file in Court a list of persons supposed to be indebted to the bankrupt with the amounts in which they are supposed to be so indebted set opposite to their names respectively. Before finally setting the name and the amount of the debt of any person on such list the official receiver shall give fourteen days notice in writing to such person stating that he has placed such person upon the list of debtors to the estate in the amount in the notice specified and that unless such person on or before the expiration of such notice gives to the official receiver notice in writing of his intention to dispute his indebtedness he will be deemed to admit that the amount set opposite his name in such list is due and owing by him to the bankrupt and will be settled on such list accordingly.

(2) A person included in such list who does not give notice of his [20]
intention to dispute his indebtedness within the time limited in that behalf shall be settled upon such list and the Court may on the application of the official receiver issue a warrant of execution against him for the amount set opposite his name in such list in the same way as if judgment had been entered up against him for such amount in favour of the official receiver,

(3) A person alleged to be indebted to the bankrupt as aforesaid may, within the time fixed in the notice, apply to the Court by motion for leave to dispute his indebtedness or the amount thereof and the Court may if it thinks fit make such order for determining the question as may seem expedient upon such person giving such security for costs and for the alleged debt as may seem reasonable.

41. — The official receiver may within three months of the receipt of notice of any onerous contract or property which has become vested in him disclaim the same and any person injured by the operation of such disclaimer may prove as a creditor under the bankruptcy to the extent of the injury.

42. — (1) The property of the bankrupt divisible amongst his creditors, shall not comprise the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value inclusive of tools and apparel and bedding not exceeding Ticals 100 in the whole.

(2) But it shall comprise all goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof.

43. — Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt [21]
where any of his property is supposed to be ; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court,' who may, execute it according to its tenor.

44. — (1) When under an execution in respect of a judgment for a sum exceeding Ticals 200, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct therefrom his costs together with the costs of the execution creditor, and retain the balance for fourteen days, and if within that time notice is served on him of the presentation of

a bankruptcy petition against the debtor, and a receiving order is made against the debtor thereon, the sheriff shall pay the balance to the official receiver to be part of the estate of the bankrupt.

(2) Should any property of the bankrupt have been attached or seized in the hand of the sheriff at the request of the creditor of the bankrupt, the sheriff shall, on notification of the bankruptcy order, sell such property and deliver the proceeds to the official receiver, deducting therefrom the costs and expenses properly incurred by the creditor, calculated on the amount actually realised by execution.

The creditor may prove in bankruptcy for the balance of such costs and expenses.

45. — The Court shall on the application of the official receiver declare null and void as against the official receiver any conveyance or transfer of property made by the bankrupt within two years prior to the date of the bankruptcy order unless the transferee can show to the satisfaction of the Court that such conveyance or transfer was entered into in good faith and for valuable consideration.

46. — Every transfer or conveyance of property or every act done or suffered by the bankrupt with a view of giving any one or more creditor or creditors preference over the other creditors shall, if the bankrupt be adjudged bankrupt on a bankruptcy petition presented against him within three months after the date of such transfer of conveyance, be deemed void as against the official receiver. Provided that nothing in this section shall affect the right of any person making title in good faith without notice of such bankruptcy petition and for valuable consideration through or under a creditor of the bankrupt. [22]

47. — Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain preferences, nothing in this Act shall invalidate, in the case of bankruptcy,

(a) Any payment by the bankrupt to any of his creditors:

(b) Any payment or delivery to the bankrupt :

(c) Any transaction by or with the bankrupt for valuable consideration : —
Provided that

(1) Such payment or transaction took place before the bankruptcy order, and

(2) At the time of the payment or transaction such person

other than the bankrupt has no notice of the suspension of payment on which the bankruptcy petition was founded.

PART IV.
PROOF OF DEBTS.

48. — The creditors of the bankrupt are allowed two months time from date of publication of the bankruptcy order in the *Government Gazette* to apply by affidavit to the official receiver for payments of their debts.

49. — (1) Every affidavit shall be made by the creditor himself, or by some person authorized on his behalf. If made by a person so authorized, it shall state his authority and means of knowledge.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debts, and specifying the vouchers if any, by which the same can be substantiated. The official receiver may at any time call for the production of the vouchers.

(3) A fee of four ticals shall be paid on each affidavit in support of proof of debt. [23]

(4) A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

50. — Where there have been mutual credits, mutual debts, or other mutual dealings between a bankrupt, and any other person proving or claiming to prove a debt under the bankruptcy, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

51. — The following creditors cannot prove in bankruptcy :

(1) Creditors who at the time when the debt was contracted knew that a bankruptcy petition had been presented against the debtor.

(2) Creditors who did not apply by affidavit to the official receiver within the time limited.

52. — (1) If a secured creditor realizes his security he may prove for the balance due to him, after deducting the net amount realized.

(2) If a secured creditor surrenders his security to the official receiver for the general benefit of the creditors he may prove for his whole debt.

(3) If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in

respect of the balance due to him after deducting the value so assessed.

(4) (a) When a security is so valued the official receiver may at any time redeem it on payment to the creditor of the assessed value.

(b) If the official receiver is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale by public auction at such time and place as may be agreed on between the creditor and the official receiver, or in default of agreement as the Court may direct. The creditor, or the official receiver on behalf of the estate, may bid or purchase. [24]

(5) If a creditor after having valued his security subsequently realizes it, or if it be realized under the provisions of this section the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

(6) If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

53. — (1) An estimate shall be made by the official receiver of the value of any unliquidated debt or liability provable as aforesaid.

(2) Any person aggrieved by any estimate made by the official receiver as aforesaid may appeal to the Court within fourteen days from the date of notice of the official receiver's estimate and the Court shall make such order as it thinks fit.

(3) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

54. — (1) On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for and which is overdue at the date of the adjudication order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding seven and a half *per centum per annum* to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment. [25]

(2) Where a debt has been proved against a bankrupt's estate and such debt includes interest, or any pecuniary consideration in lieu of interest,

such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding seven and a half *per centum per annum*, without prejudice to the right of the creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

55. — (1) The official receiver shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

(2) If any creditor is dissatisfied with the decision of the official receiver in respect of a proof, he may appeal to the Court within fourteen days from the time when he is informed of the decision of the official receiver. Such appeal shall be made by motion but the creditor shall pay the two and a half percentage fees and all the other usual fees of an ordinary action on the amount in dispute.

(3) The Court may also expunge or reduce a proof upon the application of a creditor if the official receiver declines to interfere in the matter, or in the case of a composition, upon the application of the debtor.

PART V.
DISTRIBUTION OF PROPERTY.

56. — (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the official receiver shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) Before declaring a dividend the official receiver shall cause seven days notice of his intention to do so to be inserted in the *Government Gazette*, and advertised in a local paper. [26]

(3) When the official receiver has declared a dividend he shall send to each creditor who has proved his debt a notice showing the amount of the dividend and when and how it is payable.

(4) No dividend shall be paid to any creditor which does not amount to one tical.

57. — (1) In the distribution of the property of the bankrupt, there shall be paid in priority to all other debts and in the following order: —

(a) All expenses actually incurred by the official receiver in the administration of the estate.

(b) A five per cent commission on the net assets of the estate realized in bankruptcy or under a composition.

(c) Such costs of the petitioning creditor including attorney's fees, as shall be allowed by the Court or the official receiver.

(2) Subject to the payment in full of the foregoing there shall thereafter be paid equally between themselves : —

(a) All land property or other taxes (or any local rates), due from the bankrupt at the date of the bankruptcy order and having become due and payable within six months next before that time.

(b) All wages or salary of any clerk, servant or work-man of the bankrupt for the two months immediately preceding the date of the bankruptcy order not exceeding Ticals 300.

(c) All rent due in respect of any dwelling house and premises in the occupation of the bankrupt for the two months immediately preceding the date of the bankruptcy order.

PART V. — DISTRIBUTION OF PROPERTY.

58. — (1) All debts proved in the bankruptcy other than those described in Section 57 shall be *pari passu*. [27]

(2) If there is any surplus after payment of the debts, it shall be applied in payment of interest from the date of the bankruptcy order at the rate of seven and a half *per centum per annum* on all debts proved in the bankruptcy.

(3) In the calculation and distribution of a dividend the official receiver shall make provision for any disputed proofs or claims and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

59. — When the official receiver has realized all the property of the bankrupt, or so much thereof as can be realized without needlessly protracting the proceedings, he shall declare a final dividend, but before so doing he shall give fourteen days notice to the persons whose claims to be creditors have been notified to him within the two months period, but not established to his satisfaction, that if they do not establish their claims within such time, he will proceed to make a final dividend without regard to their claims.

60. — (1) Before declaring a final dividend the official receiver shall give notice in writing to any person having any claim for work done or money spent by order of the official receiver in the winding up of an estate to deliver his account to the official receiver within fourteen days after receipt of such notice.

(2) If such person fails to do so within such time or such further time as the official receiver may allow, the official receiver shall declare and distribute the final dividend without regard to any such claim and thereupon the claim shall be forfeited both as against the official receiver personally and as against the estate.

61. — The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors with interest as by this Act provided and of the costs, charges and expenses of the proceedings under the bankruptcy petition.

PART VI.
COMPOSITION.

[28]

62. — (1) The creditors may by ordinary resolution at a meeting resolve to entertain a proposal submitted or approved by the bankrupt for a composition or arrangement of the bankrupt's affairs.

(2) No composition shall be valid unless it is confirmed at a subsequent meeting of the creditors by a special resolution and is approved by the Court.

(3) Any creditor who has proved his debt may assent to or dissent from such composition by a letter addressed to the official receiver so as to be received by the official receiver not later than the day preceding such subsequent meeting and a creditor so assenting or dissenting shall be taken as being present and voting at such meeting.

(4) The subsequent meeting shall be summoned by the official receiver by not less than seven days notice to the creditors, stating the purpose for which the meeting is convened.

(5) The bankrupt or the official receiver may after the composition is accepted by the creditors apply to the Court to approve it and seven days notice of the time appointed for hearing the application shall be given to the creditors. Such application shall be made and heard in open Court.

(6) The Court before approving a composition shall hear a report of the official receiver as to the terms of the composition and as to the conduct of the bankrupt and shall hear any objections which may be made by or on behalf of any creditor.

(7) If the Court is of opinion that the conditions required by No. 1 to 6 have not been complied with, or that the terms of the composition give an undue preference to any creditor over another creditor, the Court shall refuse to approve the composition.

(8) In any other case, the Court shall approve the composition and such approval shall be embodied in an order of the Court.

[29]

Notice of every composition so approved by the Court shall within seven days of such approval be inserted in the *Government Gazette* and in such paper as the official receiver may direct.

(9) A composition accepted and approved in pursuance of this section shall be binding on all creditors so far as it relates to any debts due to them from the bankrupt and provable in the bankruptcy.

(10) If the Court approve the proposal it may make an order annulling the bankruptcy and vesting the property of the debtor in him or in any other person on such terms and subject to such conditions (if any) as the

Court may think fit.

(11) No composition shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(12) A certificate of the official receiver that a composition has been duly accepted and approved shall in the absence of fraud be conclusive evidence as to its validity.

(13) If default is made in payment of any instalment due in pursuance of the composition or if it appears to the Court that the approval of the Court was obtained by fraud the Court may if it thinks fit on application by any creditor re-adjudge the debtor bankrupt and annul the composition or any order made thereon but without prejudice to the validity of anything duly done under or in pursuance of the composition. All debts contracted by the debtor before the date of this re-adjudication shall, save as provided by this Act, be provable in the bankruptcy.

PART VII.
OFFENCES AND PENALTIES.

63. — (1) Where it appears to the official receiver in the course of proceedings in bankruptcy that there is ground for believing that a bankrupt or any other person has been guilty of an offence under this Act or the Penal Code it shall be the duty of the official receiver to institute a prosecution against such bankrupt or other person. [30]

(2) Where a bankrupt has been guilty of any offence he shall not be exempt from prosecution therefor by reason that a composition has been accepted and approved.

64. — A bankrupt who fails without reasonable excuse to comply with any of the requirements of sections 19, 20, 21 (3) or 38 shall be punished with imprisonment not exceeding six months.

65. — A bankrupt who has been required to appear before the Court or the official receiver or a meeting of his creditors according to the provisions of the present Act, and fails to appear without reasonable excuse, shall be punished with imprisonment not exceeding six months.

66. — A bankrupt who commits any of the following offences shall be punished with imprisonment not exceeding two years :

(1) If after the beginning of the bankruptcy proceedings or within four months next before such beginning, the bankrupt, with intent to prevent the attachment or seizure of his property, conceals, transfers or delivers to any person any part of such property, or makes or causes to be made any charge on such property, or suffers any judgment to be passed against him for a sum not due.

(2) If after the beginning of the bankruptcy proceedings or within four months next before such beginning, he conceals, destroys, alters or forges any seal, book or document relating to his property or affairs, without prejudice to the punishment prescribed by the Penal Code for forgery.

(3) If after the beginning of the bankruptcy proceedings or within four months next before such beginning, he makes any omission or any false entry or statement in any book or document relating to his property or affairs, without prejudice to the punishment prescribed by the Penal Code for fabricating false evidence.

(4) If he makes any material omission or false declaration in any statement relating to his property or affairs and made before the Court, the official receiver or a meeting of his creditors. [31]

(5) If after the beginning of the bankruptcy proceedings he refuses or prevents the production of any seal, book or document relating to his property or affairs.

(6) If after the beginning of the bankruptcy proceedings be attempts to account for any part of his property by fictitious losses or expenses.

(7) If knowing or having reason to believe that a false debt has been proved by any person under the bankruptcy he fails for a period of one month to inform the official receiver thereof in writing

(8) If he commits any fraud, or if he offers, or gives or agrees to give any undue advantage, for the purpose of obtaining the consent of his creditors or any of them to any composition or agreement relating to his affairs or bankruptcy.

67. — An undischarged bankrupt who obtains credit to the extent of one hundred Ticals or upwards without disclosing in writing that he is an undischarged bankrupt, shall be punished with imprisonment not exceeding two years.

68. — A creditor who demands, or accepts, or agrees to accept for himself or for any other person any undue advantage for agreeing to a composition, shall be punished with fine not exceeding five times the value of such undue advantage.

69. — A creditor who demands, accepts or agrees to accept for himself or for any other person any undue advantage for forbearing to oppose or for consenting to the discharge of a bankrupt, shall be punished with fine not exceeding three times the value of such undue advantage.

70. — A person untruthfully stating himself in writing to be a creditor of the bankrupt for the purpose of obtaining access to or copies of any documents relating to the bankruptcy proceedings, shall be punished with fine not exceeding five hundred ticals.

PART VIII.
DUTIES OF OFFICIAL RECEIVER.

[32]

71. — (1) The duties of official receiver shall have relation both to the conduct of the bankrupt and to the administration of his estate.

(2) An official receiver for the purpose of affidavits, verifying proofs and petitions and for the purpose of other proceedings under this Act, may administer oaths.

(3) An official receiver may for the purpose of his duties issue a summons or *subpœna* for the attendance of any person before him to give evidence or to produce any document.

72. — As regards the bankrupt it shall be the duty of the official receiver : —

(1) To investigate the conduct of the bankrupt and to report to the Court thereon.

(2) To make such other reports concerning the conduct of the bankrupt as the Court may direct.

(3) To take such part and give such assistance in relation to the prosecution of any person charged with an offence under this Act as the Court may direct.

73. — As regards the estate of a bankrupt it shall be the duty of the official receiver : —

(1) To act as receiver of the bankrupt's estate and to act as manager thereof where a manager has not been appointed.

(2) To raise money or make advances for the purpose of the estate in any case where it appears necessary to do so.

(3) To summon meetings of creditors at such times as he thinks fit or the Court may direct or whenever requested in writing so to do by one fourth in value of the creditors who have proved their debts.

(4) To preside at all meetings of creditors held under this Act. [33]

(5) To advertise the interim receiving order, the bankruptcy order, the date of the bankrupt's public examination, and such other matters as it may be necessary to advertise.

(6) To divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(7) And generally to do all such acts and things as may be necessary

for the purpose of winding up the estate which the bankrupt himself could have done had he not been declared bankrupt.

74. — The official receiver may sue and be sued by the official name of "the official receiver of the property of …… a bankrupt" inserting the name of the bankrupt and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office and do all other acts necessary to be done in the execution of his office.

75. — Any suit or process commenced against an official receiver or any person acting under this Act for anything done or omitted to be done under the provisions of the Act shall be commenced within six months after the accruing of the cause of action and not after wards.

PART IX.
GENERAL.

76. — (1) The Minister of Justice may from time to time make general rules for carrying into effect the objects of this Act.

(2) The Civil Procedure Act of the year 127 shall govern all proceedings under this Act so far as is practicable.

(3) Every application to the Court shall be by motion and the Court shall direct service to be made on the official receiver and on all parties affected or likely to be affected by the motion. [34]

77. — (1) A copy of the *Government Gazette* containing any notice inserted therein in pursuance of this Act or the rules made under this Act shall be evidence of the facts stated in the notice.

(2) The production of copy of the Gazette containing any notice of a bankruptcy order or interim receiving order or order annulling a bankruptcy shall be conclusive proof in all legal proceedings of the order having been duly made and of its date.

(3) A minute of proceedings at a meeting of creditors under this Act signed by or on behalf of the official receiver shall be received in evidence without further proof.

(4) A report by the official receiver to the Court shall be *prima facie* evidence of the facts alleged in the report.

78. — (1) If the bankrupt or any other person is aggrieved by any action or decision of the official receiver he may apply to the Court within fourteen days from the time he received notice of such act or decision.

(2) The Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks fit.

79. — All orders of the Court may be appealed to the Court of Appeal.

No further appeal shall be allowed to the Dika Court save on a question of law.

80. — All orders or judgments under this Act shall be executed notwithstanding appeal, unless otherwise provided in the order or judgment.

Due notice of all appeals under this Act shall be given to the official receiver.

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